

United States
Circuit Court of Appeals

For the Ninth Circuit.

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Transcript of Record
In Five Volumes
VOLUME I
Pages 1 to 493

Upon Petition to Review and Enforce an Order of the
National Labor Relations Board

FILED

DEC 10 1942

United States
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THE TEXAS COMPANY,

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Respondent,

NATIONAL MARITIME UNION OF AMERICA,
Intervener.

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In Four Volumes

VOLUME I

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Upon Petition to Review, and Request for Enforcement
of, Order of the National Labor Relations Board

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Answer, Amended	10
Answer of the National Labor Relations Board to Petition for Review and Request for the Enforcement of an Order of the Na- tional Labor Relations Board.....	156
Certificate of National Labor Relations Board	1713
Charge, Amended	1
Complaint and Notice of Hearing.....	4
Conclusions of Law	118
Decision and Order of the National Labor Re- lations Board	81
Findings of Fact	88
Conclusions of Law	118
Order	119
Designation of Contents of Record on Review (Petitioner's)	1720
Designation of Contents of Record on Review (Respondent's)	1723
Exceptions of Respondent, Texas Company, to the Intermediate Report.....	53
Findings of Fact	88
Intermediate Report	15
Conclusions and Recommendations	49

Index	Page
Memorandum in Opposition to Petition of National Maritime Union of America for Leave to Intervene	154
Motion of Respondent, Texas Company, to Reopen the Record and for Leave to Introduce Further and Newly Discovered Evidence.....	122
Affidavit of Albert E. Van Dusen.....	126
Affidavit of T. E. Buchanan.....	128
Affidavit of A. E. Jimison.....	130
Notice of Hearing	9
Order Denying Motion to Reopen the Record and to Introduce Further and Newly Discovered Evidence	131
Order Granting Motion for Leave to Intervene	150
Order of the National Labor Relations Board	119
Petition for Review	134
Petition in Intervention	145
Reply to Suggestions of the National Labor Relations Board	151
Review of an Order of the National Labor Relations Board:	
Petition for	134
Statement of Points on	1717
Designation of Contents of Record on (Petitioner's)	1720
Designation of Contents of Record on (Respondent's)	1723

Index	Page
Statement of Points on Review	1717
Suggestions of the National Labor Relations Board with Respect to the Petition of the National Maritime Union of America for Leave to Intervene	149
Testimony	163
Exhibits for the National Labor Relations Board:	
5—Stipulation of Facts	163
6—Constitution of the National Maritime Union of America.....	1608
7—Standard Tanker Agreement of the National Maritime Union.....	1676
8—An Open Letter to All Texas Co. Ships From the Crew of the S.S. Nevada	253
9—An Open Letter to Texas Co. Seamen	306
10—Affidavit of Leo Herman.....	937
Exhibits for Respondent:	
12—Certificate of Discharge	730
12—Working Conditions and Over-time Rules—Unlicensed Personnel (October 1, 1937)	1106
18—Crew List S/S “Washington”, Sailing Date, July 16	1397
19-A—Crew List S/S “Washington”, Sailing Date, January 12, 1938	1710

Index	Page
Exhibits for Respondent (Cont.):	
19-B—Crew List S/S “Washington”, Sailing Date, November 6, 1938	1711
Admission of counsel relative to other employment obtained by J. Gordon Rosen...	1368
Stipulation as to testimony of Peter Peterson	1374
Witnesses for the National Labor Relations Board:	
Blasingame, James P.	
—direct	515
—cross	556
—redirect	601
Buckless, Clarence	
—direct	641
—cross	720
—redirect	827
—recross	849
—redirect	852
—recalled, recross	946
—recalled, direct	1335
—cross	1365
—redirect	1368
Hart, George B.	
—direct	495
—cross	506
—redirect	512
—recross	514

Index	Page
Witnesses for the National Labor Relations Board (Cont.):	

Hermen, Leo

—direct	861
—cross	876
—redirect	930
—recross	940

Lortie, Albert P.

—direct	854
—cross	860

Owens, John

—direct	941
—cross	945

Roney, J. P.

—direct	168
—cross	187
—redirect	191
—recross	193
—redirect	195
—recross	197
—redirect	197

Rosen, J. Gordon

—direct	198
—cross	319
—redirect	458
—recross	478
—recalled, cross	945

Witnesses for Respondent:

Ader, Martin

—direct	1114
—cross	1114

Index	Page
Witnesses for Respondent (Cont.):	
Baldwin, E. H.	
—direct	947
—cross	1003
—redirect	1031
—recross	1036
Bergman, G. A.	
—direct	1387
—cross	1404
—redirect	1432
—recross	1435
—redirect	1446
Carr, J. W.	
—direct	1467
—cross	1493
—redirect	1522
—recross	1527
—redirect	1536
Gilbert, Elder	
—direct	1328
—cross	1332
—redirect	1334
Hopper, Herman	
—direct	1287
—cross	1293
—redirect	1303
—recross	1304
—recalled, redirect	1326
—recross	1327

Index	Page
Witnesses for Respondent (Cont.):	
Johannesen, C. B.	
—direct	1539
—cross	1553
—redirect	1583
—recross	1588
—recalled, redirect	1596
—cross	1603
Olson, Charles L.	
—direct	1306
—cross	1315
—redirect	1324
—recross	1325
—redirect	1325
Peterson, Clarence V.	
—direct	1375
—cross	1379
—redirect	1385
—recross	1386
Rosen, Dave	
—direct	1041
—cross	1069
—redirect	1105
Swanson, Hugo	
—direct	1234
—cross	1251
—redirect	1281
—recross	1286
—redirect	1286

Index	Page
Witnesses for Respondent (Cont.):	
Tranberg, Carl C.	
—direct	1124
—cross	1165
—redirect	1223
—recross	1225
—redirect	1228
—recross	1232
Zihrul, Ernest	
—direct	1447
—cross	1453
—recalled, recross	1537

Index

Page

PROCEEDINGS IN NATIONAL LABOR
RELATIONS BOARD ON REMAND
OF CAUSE

Answer of National Labor Relations Board to Petition for Review and Request for Enforce- ment of Order.....	1792
Certificate of the National Labor Relations Board to Supplemental Transcript of Rec- ord	1742
Decision and Order of the National Labor Re- lations Board, Dated July 18, 1942.....	1749
Conclusions of Law.....	1778
Findings of Fact.....	1756
Order	1779
Remedy	1776
Statement of Case.....	1749
Decree (CCA #9518).....	1740
Letter of Board, July 8, 1941, Granting Per- mission to File Brief.....	1748
Letter of Petitioner of July 3, 1941, Request- ing Permission to File Brief.....	1747
Opinions (CCA #9518).....	1725

Index	Page
Order Vacating Order, and Directing Reargument Before the National Labor Relations Board	1744
Petition for Review.....	1783
Stipulation Providing for Contents of Record.	1799

United States of America
Before the National Labor Relations Board
16th Region

Case No. XVI C270

Date filed Aug. 26, 1938.

In the Matter of

THE TEXAS COMPANY, MARINE
DIVISION

and

THE NATIONAL MARITIME UNION
Port Arthur Branch

AMENDED CHARGE

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that The Texas Company, Marine Division has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of said Act, in that

On the following dates it, by its officers, agents and employees, terminated the employment of the following:

The Texas Company vs.

April 18, 1938	F. W. Zinkiewicz	Able Bodied Seaman	SS Rhode Island
April 17, 1938	D. G. MacClenan	Able Bodied Seaman	SS Rhode Island
April 18, 1938	C. Buckless	Boatswain	SS Nevada
April 19, 1938	J. Gordon Rosen	Able Bodied Seaman	SS Nevada
July 14, 1938	F. W. Zinkiewicz	Able Bodied Seaman	SS Washington
July 14, 1938	C. Buckless	Quartermaster	SS Washington
July 14, 1938	J. Gordon Rosen	Able Bodied Seaman	SS Washington
September 19, 1937	James P. Blasingame	Quartermaster	SS California
September 19, 1937	Arthur Spencer	2nd Pumpman	SS California
September 19, 1937	J. Gordon Rosen	Able Bodied Seaman	SS California
July 30, 1938	A. P. Lortie	Able Bodied Seaman	SS Roanoke
July 30, 1938	John Helton	Able Bodied Seaman	SS Roanoke
July 30, 1938	C. T. Adams	Ordinary Seaman	SS Roanoke
July 17, 1938	R. M. Lyons	Ordinary Seaman	SS Roanoke

because of their membership and activities in behalf of the National Maritime Union, a labor organization, and at all times since such dates it has refused and does now refuse to employ the above named employees.

By the acts set forth in the paragraphs above, and by other acts and conduct, it, by its officers, agents and employees, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

NATIONAL MARITIME UNION

Port Arthur Branch

By: L. C. AMES,

Business Agent

311½ Proctor St.,

Port Arthur, Texas.

Subscribed and sworn to before me this 24 day of August, 1938.

[Seal]

MRS. R. LYLES,

Notary Public, Jefferson County, Texas

[Title of Board and Cause.]

COMPLAINT

It having been charged by the National Maritime Union, Port Arthur Branch, a labor organization, that The Texas Company, hereinafter referred to as the respondent, has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, the National Labor Relations Board by the Regional Director for the Sixteenth Region of the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations—Series 1, as amended, Article IV, Section 1, hereby issues its complaint and alleges as follows:

1. The respondent, The Texas Company, is and was at all the times hereinafter mentioned a corporation organized under and existing by virtue of the laws of the State of Delaware with its principal offices located in New York City, New York, and is now and has at all times hereinafter mentioned been engaged in the business of the production, refining, sale and distribution of petroleum and petroleum products in the various states of the United States and foreign countries.

2. The respondent, in the course and conduct of its business, operates refineries at or near Houston, Beaumont, and Port Arthur, Texas, and maintains offices at Port Arthur, Texas, among other things, for the purpose of operating of what is known as its Marine Division.

3. The respondent, in the course and conduct of its business, owns, operates and maintains approximately twenty-eight sea-going vessels for the purpose of transporting and distributing petroleum and petroleum products processed at its refineries as aforesaid.

4. The respondent, in the course and conduct of its business, causes and has continuously caused over a long period of time the crude oil used in its refineries as aforesaid to be piped or transported from oil fields in the States of Texas, Oklahoma, and other states, and causes and has continuously caused said petroleum and petroleum products to be transported and distributed in interstate commerce through or between states of the United States other than the State of Texas and to foreign countries by means of the sea-going vessels above mentioned. The respondent, in the course and conduct of its business, transported or caused to be transported on its sea-going vessels as above mentioned, approximately 32,705,707 barrels of petroleum and/or petroleum products into and through states of the United States other than the State of Texas and foreign countries from its port or terminal at Port Arthur, Texas, between November, 1937 and April, 1938.

5. The respondent, by its officers, agents and/or employees, while operating as described above, did discharge the following named employees, and on or about the dates mentioned, in its Marine Division, and has at all the times since said dates refused to reinstate said individuals.

The Texas Company vs.

April 18, 1938	F. W. Zinkiewycz	Able Bodied Seaman	SS Rhode Island
April 17, 1938	D. G. MacClellan	Able Bodied Seaman	SS Rhode Island
April 18, 1938	C. Buckless	Boatswain	SS Nevada
April 19, 1938	J. Gordon Rosen	Able Bodied Seaman	SS Nevada
July 14, 1938	F. W. Zinkiewycz	Able Bodied Seaman	SS Washington
July 14, 1938	C. Buckless	Quartermaster	SS Washington
July 14, 1938	J. Gordon Rosen	Able Bodied Seaman	SS Washington
September 19, 1937	James P. Blasingame	Quartermaster	SS California
September 19, 1937	Arthur Spencer	2nd Pumpman	SS California
September 19, 1937	J. Gordon Rosen	Able Bodied Seaman	SS California
July 30, 1938	A. P. Lortie	Able Bodied Seaman	SS Roanoke
July 30, 1938	John Helton	Able Bodied Seaman	SS Roanoke
July 30, 1938	C. T. Adams	Ordinary Seaman	SS Roanoke
July 17, 1938	R. M. Lyons	Ordinary Seaman	SS Roanoke

6. The respondent discharged the individuals named in paragraph 5 above and refused to reinstate them for the reason that they, and each of them, joined and/or assisted a labor organization of the respondent's employees, to-wit, the National Maritime Union, Port Arthur Branch, and engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection.

7. By the discharge of and the refusal to reinstate the individuals named in paragraph 5 above and as above set forth, the respondent did discriminate and is discriminating in regard to the hire and the tenure of employment of the above-named individuals, and did discourage and is discouraging membership in the said labor organization and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of said Act.

8. The respondent, while operating its business as above set forth, through its officers, agents and employees, namely, C. L. Hand and various mates and captains, on its ships as aforesaid, has since on or about August 1, 1937 made various and sundry statements to its employees discouraging affiliation in or activity in behalf of the aforesaid union, such as statements made by one Captain Bergman on or about June 24, 1938, when he stated to one J. Gordon Rosen that he "would not recognize Rosen or any other representative of the crew as the collective bargaining agent", and such as the state-

You are further notified that you have the right to file with the Regional Director for the Sixteenth Region, with offices at 420 United States Court-house, Fort Worth, Texas, acting in this matter as agent of the National Labor Relations Board, an answer to the attached complaint on or before the 12th day of September, 1938.

Enclosed herewith for your information is a copy of the Rules and Regulations—Series 1, as amended, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly invited to Article II of said Rules and Regulations.

A copy of the charge filed herein is also attached hereto.

In Witness Whereof the National Labor Relations Board has caused this, its complaint and Notice of hearing, to be signed by the Regional Director for the Sixteenth Region on the 3rd day of September, 1938.

[Seal]

EDWIN A. ELLIOTT,

Regional Director, National
Labor Relations Board, Six-
teenth Region.

[Title of Board and Cause.]

AMENDED ANSWER

The Texas Company, a Delaware corporation, respondent in the above-entitled proceeding, answering the complaint herein, shows and alleges:

1. That it admits the facts alleged in paragraph of the complaint numbered "1".

2. That it admits the facts alleged in paragraph of the complaint numbered "2".

3. That it admits the facts alleged in paragraph of the complaint numbered "3".

4. That it denies each and every fact and conclusion alleged in paragraph of the complaint numbered "4" except the allegation that it causes and has caused crude oil to be piped or transported from oil fields in the states of Texas, Oklahoma and other states, and that it causes and has caused petroleum and petroleum products to be transported by means of sea-going vessels between states of the United States and to foreign countries; and except that it alleges that it is without knowledge as to whether the acts referred to constitute interstate commerce.

5. That it denies each and every fact and conclusion alleged in paragraph of the complaint numbered "5", except that it admits that it discharged the following named individuals, on or about the dates mentioned, and has at all times since said dates refused to reinstate said individuals:

April 18, 1938	C. Buckless	SS Nevada
April 19, 1938	J. Gordon Rosen	SS Nevada
July 14, 1938	F. W. Zinkiewycz	SS Rhode Island
July 14, 1938	J. Gordon Rosen	SS Washington
July 30, 1938	C. T. Adams	SS Roanoke
July 30, 1938	A. P. Lortie	SS Roanoke
July 30, 1938	John Helton	SS Roanoke
July 14, 1938	C. Buckless	SS Washington

Respondent alleges that in answering paragraph "5" it is using the word "discharge" in the sense that the contracts of employment with said individuals to-wit: Shipping Articles, were terminated pursuant to their terms and respondent declined to enter into new contracts of employment with said individuals on or about the dates above referred to.

Further answering paragraph "5" of the complaint, respondent denies that it discharged (as the term "discharged" is commonly defined and understood) those persons named in paragraph "5" of the complaint upon the dates mentioned, and it denies that it has refused and still refuses to reinstate them; but, on the contrary, states that their term of employment with respondent had terminated upon the dates mentioned in accordance with the terms of the written Shipping Articles of contract between said persons and respondent.

6. That it denies each and every fact and conclusion alleged in paragraph of the complaint numbered "6".

7. That it denies each and every fact and conclusion alleged in paragraph of the complaint numbered "7".

8. That it denies each and every fact and conclusion alleged in paragraph of the complaint numbered "8".

9. That it denies each and every fact and conclusion alleged in paragraph of the complaint num-

bered "9", except that respondent admits that it has denied passes to union representatives to board vessels of respondent. Respondent alleges, however, that it has always been its policy, and still is, to deny passes to anyone to board its vessels other than duly authorized employees and representatives of respondent, and that in carrying out said policy it has not in any way or at any time discriminated between any union or labor organizations.

10. That it denies each and every fact and conclusion alleged in paragraph of the complaint numbered "10".

11. That it denies each and every fact and conclusion alleged in paragraph of the complaint numbered "11".

Wherefore, respondent respectfully prays that the complaint herein be dismissed.

THE TEXAS COMPANY

By J. P. RONEY

General Manager, Marine
Department

Address of Respondent:

The Texas Company,
135 East 42nd Street,
New York, New York.

Attorney for Respondent:

Albert E. Van Dusen,
135 East 42nd Street,
New York, New York.

The State of Texas,
County of Jefferson—ss.

Before the undersigned, a Notary Public in and for the said County and State, personally appeared J. P. Roney, known to me to be a credible person, who, after being duly sworn, upon oath deposes and says that he is General Manager of the Marine Department of The Texas Company, the Respondent in the above case; that he has read the above and foregoing answer and is familiar with the facts stated therein; that all of the facts stated therein are true and correct, except those facts which are therein stated to be on information and belief, and as to such facts he verily believes them to be true.

J. P. RONEY

Subscribed and sworn to before me this 12th day of September A. D. 1938.

[Seal]

HELEN McCURDY

Notary Public in and for Jefferson County, Texas.

United States of America
Before The National Labor Relations Board
Sixteenth Region

Case No. XVI-C-270

In the Matter of

THE TEXAS COMPANY, MARINE
DIVISION

and

NATIONAL MARITIME UNION,¹ PORT
ARTHUR BRANCH.

INTERMEDIATE REPORT

Upon charges and amended charges duly made and acting pursuant to proper authority, the National Labor Relations Board, by Edwin A. Elliott, its Regional Director for the Sixteenth Region, issued its complaint against The Texas Company, Marine Division, the respondent herein. The complaint and notice of hearing thereon were duly served upon the respondent.

The complaint, as amended, alleged that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the

1. According to Board Exhibit 6, the correct name of the Union is National Maritime Union of America.

National Labor Relations Act.² The respondent's answer admitted some of the specific facts alleged in the complaint, but denied that it had engaged in any unfair labor practices.

At the commencement of the hearing, the Board moved to amend its complaint to include an allegation that the respondent discharged Rufus H. Andrews and Jack Wilson, on or about July 8, and March 17, 1938, respectively, for the reason, among others, that they "joined and/or assisted" the Union. The motion was granted without opposition. On the consent of the parties the respondent's answer was deemed amended to include a denial of the charge that the said Andrews and Wilson were discharged in violation of the Act.

During the course of the hearing, the respondent moved to strike certain testimony given by the witness J. Gordon Rosen. Decision was reserved. The motion is hereby denied. The respondent also moved to strike "the testimony of all witnesses in regard to conversations between witnesses and any master or officer of any vessel belong (belonging) to The Texas Company or any officer or agent of The Texas Company regarding labor union matters or labor union activities as proof of unfair labor

2. The National Labor Relations Act is herein referred to as the Act, the National Labor Relations Board is herein referred to as the Board, the National Maritime Union of America, Porth Arthur Branch is herein referred to as Union, and The Texas Company, Marine Division, is herein referred to as the respondent.

practices." Decision was reserved. The motion is hereby denied. Decision was likewise reserved on the respondent's motion to strike all testimony adduced by the Board in support of the allegations of the amended complaint in respect to the discharge of F. W. Zinkewycz from the S. S. "Washington" on July 14, 1938. The motion is hereby denied.

During the course of the hearing, the Board moved to dismiss the amended complaint as to the following named employees who were alleged to have been discharged on the following named dates from the following named boats:

Employee	Date of Dismissal	Boat
F. W. Zinkewycz	April 18, 1938	S. S. Rhode Island
D. G. MacClennan	April 17, 1938	S. S. Rhode Island
Arthur Spencer	Sept. 19, 1937	S. S. California
John Helton	July 30, 1938	S. S. Roanoke
C. T. Adams	July 30, 1938	S. S. Roanoke
R. M. Lyons	July 17, 1938	S. S. Roanoke
Jack Wilson	March 17, 1938	S. S. Washington

The said motion was granted without opposition.

The respondent, during the course of the hearing, moved to dismiss that portion of the amended complaint which alleged that Rufus H. Andrews and F. W. Zinkewycz were dismissed by the respondent on July 8, and July 14, 1938, respectively, for union activities. The motion is hereby granted.

The undersigned, as duly designated Trial Examiner of the National Labor Relations Board,

conducted a hearing on September 12, 13, 14, 15, 16, 19, 20, 21 and 22, 1938, at Port Arthur, Texas. On November 28 and 29, 1938, a further hearing was conducted by Charles E. Persons, who had been, pursuant to an order of the Board, designated Trial Examiner in the place and stead of the undersigned. At the hearing all parties were afforded an opportunity to participate, to call, examine and cross-examine witnesses and to introduce other evidence. At the conclusion of the hearing the parties were afforded a reasonable opportunity to argue orally before Trial Examiner Persons and were advised by him that they would be given an opportunity for oral argument before the Board upon request to the Board made within ten (10) days from the receipt of the Intermediate Report. The parties were further advised by the said Persons that they might file briefs with him. The parties did not care to avail themselves of the opportunity of arguing orally before or filing briefs with the said Persons. At the close of the hearing, counsel for the respondent made several motions to dismiss the amended complaint. Ruling was reserved on the said motions, which are hereby denied, except in so far as they relate to that portion of the amended complaint alleging that Rufus H. Andrews and F. W. Zinkewycz were discharged for union activities on July 8 and July 14, 1938, in which respect the motions of the respondent are granted.

The Issues Involved

It is the contention of the Board that the respondent engaged in and was engaging in, at the time of the issuance of the complaint herein, unfair labor practices in violation of the Act, in that it discharged for union activities the following named employees on the following named dates from the following named ships:

Employee	Date of Dismissal	Ship
J. Gordon Rosen	Sept. 19, 1937	S. S. California
	April 19, 1938	S. S. Nevada
	July 14, 1938	S. S. Washington
F. W. Zinkiewycz	July 14, 1938	S. S. Washington
C. Buckless	April 18, 1938	S. S. Nevada
	July 14, 1938	S. S. Washington
James P. Blasingame	Sept. 19, 1937	S. S. California
A. P. Lortie	July 30, 1938	S. S. Roanoke
Rufus H. Andrews	July 8, 1938	S. S. California

It is also the contention of the Board (1) that the captains, mates and other officers of the several hereinabove-mentioned boats, made disparaging remarks to the respondent's employees from time to time regarding the union; (2) that these remarks were made for the sole purpose of discouraging membership in the said Union; and (3) that the respondent discriminated against the Union when hiring unlicensed seamen.

The respondent contends, however, (1) that at no time did any of its officials make any disparaging remarks about the Union to its employees; (2) that

if any official of the respondent did make any remarks whatsoever about the Union to the employees, they were only the expressions of the thoughts of the individual or individuals who is or are charged with making the said remarks, and that the respondent should not be held accountable for such remarks, if any were uttered, because the first amendment of the Constitution of the United States "prohibits the Congress of the United States from making any law abridging the freedom of speech or of the press"; (3) that the said Rosen, Buckless, Blasingame and Lortie were either dismissed for good and sufficient cause or quit voluntarily; (4) that the said dismissed employees now have and at the time of the hearing had obtained "substantially equivalent employment elsewhere and therefore ceased to be employees of The Texas Company"; (5) that the aforesaid four dismissed employees' "employment with respondent had terminated upon the dates mentioned (in the amended complaint) in accordance with the terms of the written Shipping Articles of Contract between said persons and respondent"; and (6) the respondent at no time discriminated against the Union in regard to hiring unlicensed seamen.

Upon the record thus made and from his observation of the witnesses who appeared before him, the undersigned makes, in addition to the above, the following specific findings of fact:

Findings of Fact

I. Respondent

1. The predecessor company of the present The Texas Company was duly incorporated under and by virtue of the laws of the State of Texas in 1902. The present Company which is capitalized for \$250,000,000, was duly incorporated under and by virtue of the laws of the State of Delaware in 1927, and is a wholly owned subsidiary of The Texas Corporation.

2. The gross receipts of the respondent for the fiscal year ending December 31, 1937, amounted to upwards of \$280,000,000.

3. According to the respondent's last franchise tax return to the Secretary of State of Texas, covering the fiscal year ending December 31, 1937, 13.809 per cent of its business was reported as intrastate, and 86.191 per cent as interstate in character.

4. The respondent operates a refinery at Galena Park, Texas, near the city of Houston. At this refinery a variety of petroleum products are manufactured. Chief among these are gasoline and fuel oils. Gasoline is the principal product, better than 25 per cent of the total throughput of crude being devoted to the production of gasoline.

5. The crude oil used in the Galena Park Refinery comes principally from producing wells in Texas and New Mexico. Most of the crude moves to the refinery through pipe lines operated by The Texas New Mexico Pipe Line Company, the ma-

jority of the stock in which is owned by The Texas Corporation. This company is a common carrier with tariffs prescribed by the Interstate Commerce Commission. A negligible amount of crude is received by means of tank cars.

6. The average daily throughput of the refinery is approximately 20,000 barrels. Of the finished products, approximately 75 per cent are shipped out of Galena Park by means of seagoing tankers destined for points outside of the State of Texas.

7. Unfinished crude distillates are pumped by means of a pipe line to the Port Arthur, Texas, refinery of the respondent.

8. The Galena Park Refinery is adjacent to the Houston ship channel, a deep sea outlet to the Gulf of Mexico, and on the respondent's property are docks at which tankers are loaded.

9. The Port Neches Works of the respondent are located at Port Neches, Texas. The principal products manufactured at the Port Neches Works are roofing, asphalt, steel barrels, wood barrels and drums. The principal raw materials used are crude oil, felt, sheet steel, wood staves, slate, paper and nails. The daily average throughput of crude oil is approximately 25,000 barrels. Most of the crude is obtained from the States of Texas and Louisiana, but substantial quantities arrive by tanker and barge from Mexico.

10. All of the felt, slate, sheet steel and paper is procured from sources outside of the State of Texas.

11. At the Port Neches docks are berths for sea-going vessels. Most of the roofing and asphalt leaves the Port Neches Works by means of tanker and/or freighter bound for destinations outside of the State of Texas. All of the barrels and drums manufactured at Port Neches are utilized by the respondent as containers for its own products.

12. That portion of the daily throughput which is not used in the production of asphalt is pumped, after the primary distillation process, to another refinery of the respondent at Port Arthur, Texas, 10 miles away, where the refining process is completed. In finished form, a substantial per cent of the crude oil distillates pumped to Port Arthur eventually reach a destination outside of the State of Texas.

13. Products of the respondent are in part distributed by means of 2100 wholesale outlets and over 40,000 retailers located in most of the States of the United States. Most of these products carry registered trade-marks.

14. The respondent owns, maintains and operates through what is known as its Marine Division, approximately 28 ocean-going vessels, having an average capacity of 11,000 tons, all said vessels being registered with the United States Department of Commerce. The respondent maintains its principal office for Marine Division in New York City, New York, and other offices are located in Chicago, Illinois, Norfolk, Virginia, Los Angeles, California, and Port Arthur, Texas.

15. Said vessels are used by the respondent in transporting the aforesaid petroleum and all petroleum products of the respondent between the Gulf ports listed below and the following ports of the United States and foreign countries:

Port Arthur, Houston, Corpus Christi, Texas
New Orleans, Louisiana
Mobile, Alabama
Tampa, Florida
Charleston, South Carolina
Claymont, Delaware
Bayonne, New Jersey
Providence, Rhode Island
Portland, Maine
Norfolk, Virginia
Baltimore, Maryland
Portland, Oregon
Los Angeles, California
Seattle, Washington
San Francisco, California
Liverpool, England
Rio de Janeiro, Brazil
Curacao, Dutch West Indies

II. The Organization Involved

16. The National Maritime Union of America, affiliated with the Committee for Industrial Organization, hereinafter referred to as the C. I. O., was founded on May 3, 1937, and is a labor organization within the meaning of the Act. It admits to membership all unlicensed seamen employed by the respondent.

III. The Unfair Labor Practices

A. Interference, restraint and coercion

17. On or about November 1, 1936, there was a general strike called in the shipping industry of the United States which lasted until sometime in the early part of January 1937. Immediately after the cessation of the said strike, the "rank and file" of the International Seamen's Union,³ formed the National Maritime Union of America, which later became affiliated with the C. I. O.

18. The Union soon after its formation began organizing the unlicensed seamen aboard the respondent's ships. The Port Arthur Branch of the Union became very active in soliciting membership from among the respondent's unlicensed seamen. Because it was, and it still is, the respondent's policy to refuse permission to a delegate or a representative of any labor organization to board its boats in order to conduct organizational activities, the Union could only obtain new members by having its members solicit membership and by having its members distribute union literature aboard the respondent's boats.

19. The record is clear that on account of the respondent's said policy, the Union has been handicapped in its efforts to obtain new members. Moreover, because of the respondent's antipathy toward

3. An affiliate of the American Federation of Labor.

labor unions among its unlicensed personnel, at least four union members were discharged for union activities.

20. The four union members who were discharged by the respondent for union activities, as will be more fully related below, were members of the crew of the S. S. Washington, S. S. Nevada, S. S. California, and the S. S. Roanoke. The captains, mates and others who were in the respondent's employ in a supervisory capacity aboard the aforementioned boats were openly and outspokenly adverse to any union activities aboard the boats. The statements which were attributed to them by the Board's witnesses clearly show that they intended to allow no union to get a foothold upon their boats.

21. Mr. Ernest Zihrul, a witness called by the respondent, testified that he was a member of the Union and was then a quartermaster of the S. S. Washington at the time Buckless, Rosen and Zinkewycz were members of the crew. During the course of his examination by the Board's counsel, he stated that prior to the arrival of the above three men the Union held no meetings aboard the S. S. Washington; that soon after the arrival of Buckless, Rosen and Zinkewycz, union meetings were held and that Rosen presided over them. However, the above-named three men only remained members of the crew for a short time before they were dis-

missed⁴ from the respondent's employ, the details of which are set forth below.

22. Union activities aboard the S. S. Roanoke were at a standstill until the advent of Lortie. His stay aboard the boat was likewise short-lived. The details of his dismissal are also set forth below.

23. Rosen's arrival aboard the S. S. Nevada and the S. S. California brought new life to the Union and under his leadership regular union meetings were again started. As soon as Rosen's and Blasingame's activities and affiliations on behalf of the Union became known to the captain and the mates of the S. S. California, the services of both Rosen and Blasingame were soon dispensed with by the respondent.

24. In order to frustrate the union's plans to organize the unlicensed personnel aboard the respondent's boats, the captains and the mates of S. S. Washington, S. S. Nevada, S. S. California and S. S. Roanoke made many disparaging remarks about the Union to the members of the crew. The following are some of the statements attributed to the officers of the above named boats by the Board's witnesses:

"I want you to understand something right now. There is to be no drunkenness assisting

4. "Dismissed" is used throughout this report instead of "discharged" in order not to confuse the word "discharge" with "the certificate of discharge" which the seamen receive at the end of their employment.

(missing) watches or union agitating aboard here.”

“He (Mate Baldwin of the S. S. California) told me (Quartermaster Blasingame of the S. S. California) all the time that he didn’t have any use for the union whatsoever.”

“He (Baldwin) told me (Blasingame) he belonged to some union out on the west coast, and he got gyped out of about \$50.00, and he never had use for a union since.”

“There is a man who won’t ride this ship long.” (The person referred to wore a union button)

“Well, if he is (a union man) he won’t be on this ship very long.”

“There is one of your rank and file ships. Don’t you think this ship looks better?”

“You can’t ride this ship any more. Go ride one of your rank and file ships.”

“These guys aren’t going to ride this ship. This ship is no union ship and they ain’t going to ride it.”

25. The Board’s witnesses attributed many other similar remarks to the officers of the various respondent’s ships, most of which remarks were denied by them. It is highly improbable that all the Board’s witnesses were not telling the truth. The undersigned finds that the statements attributed to the said captains and mates were made by them and were made for the sole purpose of discouraging membership in the Union.

26. Moreover, several of the dismissed employees

testified that when they arrived on the boat for the first time, they were queried by either the captain or the first mate regarding their union affiliations. They were warned at that time by the officials of the boat that no union activities would be permitted aboard the boat.

27. By the activities hereinabove described, the respondent has interfered with, restrained and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act.

28. By the said activities, the respondent has discouraged membership in a labor organization known as the National Maritime Union of America.

B. The discriminatory dismissals.

29. The complaint, as amended, alleged that the following named employees were dismissed by the respondent from the following named boats on the following named dates because they joined and/or assisted the Union:

Employee	Date of Dismissal	Boat
J. Gordon Rosen	Sept. 19, 1937	S. S. California
	April 19, 1938	S. S. Nevada
	July 14, 1938	S. S. Washington
F. W. Zinkiewycz	April 18, 1938	S. S. Rhode Island
	July 14, 1938	S. S. Washington
C. Buckless	April 18, 1938	S. S. Nevada
	July 14, 1938	S. S. Washington
James P. Blasingame	Sept. 19, 1937	S. S. California
A. P. Lortie	July 30, 1938	S. S. Roanoke
Rufus H. Andrews	July 8, 1938	S. S. Australia
D. G. MacClennan	April 17, 1938	S. S. Rhode Island
Arthur Spence	Sept. 19, 1937	S. S. California
John Helton	July 30, 1938	S. S. Roanoke
C. T. Adams	July 30, 1938	S. S. Roanoke
R. M. Lyons	July 17, 1938	S. S. Roanoke
Jack Wilson	March 17, 1938	S. S. Washington

30. During the course of the hearing, counsel for the Board moved to dismiss the amended complaint as to Jack Wilson, R. M. Lyons, C. T. Adams, John Helton, Arthur Spence, D. G. MacClennan, and the discharge of F. W. Zinkiewicz's dismissal on April 18, 1938. The motion was granted without opposition. The following evidence was adduced with respect to the other six alleged to have been discriminatorily dismissed:

31. J. Gordon Rosen. Rosen became a member of the Union at its inception, and sometime in the spring of 1937 became very active on its behalf. He openly circulated union literature and openly solicited members.

32. He had at least 3 years' experience as an able-bodied seaman before he was employed by the respondent, in that capacity, on October 24, 1935 and assigned to the S. S. Nevada.

33. On February 2, 1936, while the boat was in New Orleans, Rosen decided to leave the Nevada, and according to his testimony the following colloquy took place between the captain, the first mate and himself:

“Q. When you left that ship, did you leave of your own desires?

A. Yes, sir. The captain even tried to hold me on there. So did the mate.

Q. How do you mean?

A. Well, the mate told me, ‘There is no need for you quitting here. You can go to

Port Arthur with us.' This was in New Orleans.

I told him, 'I want to get off here.'

Q. For reasons of your own?

A. For reasons of my own. I went up and saw the captain, Captain Swanson. He said, 'It is going to be hard to get a man in your place.'

I said, 'Well, I want to quit here.'

He said, 'Well, I don't think I can give you your money unless you come to Port Arthur with us.'

I said, 'I will take a chance on that.'

I left and went and packed up my clothes.

Q. Did he give you your money?

A. Well, after I packed up my clothes and was ready to go ashore the mate called me and told me, 'The captain will give you your money.'

Q. What was the Mate's name?

A. Tranberg; Carl Tranberg."

34. The record is barren of any evidence of union activities by Rosen while he was on the S. S. Nevada between October 24, 1935 and February 2, 1936.

35. On June 30, 1937, Rosen was rehired by the respondent as an able-bodied seaman and assigned to the S. S. California. Rosen testified that when he reported for duty, first mate Baldwin said to him, "there is one thing I want to tell you we don't allow on this ship, and that is getting drunk, miss-

ing watches, and we don't allow any agitation with the crew on this union business." Baldwin denied that he made that statement to Rosen but the record reveals that not only did Baldwin advise Rosen against indulging in union activities but that he also warned other members of the crew to the same effect.

36. Despite Baldwin's warning, Rosen did indulge in union activities and, in fact, was selected by the crew on several occasions to present their grievances to the captain. Although the captain refused to recognize Rosen as the crew's delegate, the grievances which he presented were rectified to the satisfaction of all. Rosen also started anew the holding of regular union meetings which were neglected prior to his coming on board.

37. Rosen testified that at no time during his employment on the S. S. California was his work ever adversely criticized by any official of the boat. In fact, the record shows that Rosen was highly praised, at times, for his seamanship.

38. The respondent maintained that Rosen voluntarily quit his position on September 18, 1937. Rosen disputes this contention and states that he was dismissed by Baldwin and when he inquired of the first mate the reason for his dismissal, he was informed, "Well, you know we don't want any agitating back there." The credible evidence shows that Rosen was dismissed because he failed to heed the warning given to him by Baldwin.

39. At the time of his dismissal, Rosen was earning \$80 per month besides his room and board. On January 10, 1938, he was rehired by the respondent and again assigned to S. S. Nevada. During the interim, between September 18, 1937 and January 10, 1938, Rosen had several temporary positions with the Gulf Company at a salary slightly higher than he received from the respondent.

40. Rosen testified that when he reported for duty on the last mentioned boat, he was cordially welcomed by the captain and by Carl Tranberg, the first mate. Both of these gentlemen denied that they greeted Rosen in any different way than they would have greeted any former member of the crew.

41. Rosen was employed on this boat until April 19, 1938, during which time the S. S. Nevada made a trip to Spain. He testified that during this employment he was given several special assignments which were not customarily given to able-bodied seamen. He also stated that on several occasions his work was praised by his superiors. Captain Swanson and Tranberg testified to the contrary and stated that his work was, on occasions, very poor. They also stated that he shirked his duties and would often leave his work for long periods of time to smoke a cigarette or a pipe.⁵ In spite of all the criticism, the captain and the first mate made of Rosen's work, he was retained by them

5. The uncontradicted evidence shows that Rosen does not smoke tobacco in any form.

for 3½ months, during which time the boat made numerous trips to and from Port Arthur.

42. The evident reason for Rosen's dismissal was his activities on behalf of the Union. When Rosen was previously aboard the S. S. Nevada, he did not engage in any union activities and his work was not subject to attack by the captain and the mate. However, the situation changed and when Rosen was on board the S. S. Nevada in 1938, then he was very active on behalf of the Union. He openly solicited members and he openly distributed union literature among members of the crew. He also presented grievances to the captain as a union delegate of the crew. He also drafted the letter (Board Exhibit No. 8) which was addressed, "An open letter to all Texas Co. Ships" and signed "Crew S. S. Nevada," wherein he sought to have all the respondent's ships manned by members of the Union. This letter was sent to the crew of every ship of the respondent. Moreover, the uncontradicted evidence shows that before Rosen boarded the S. S. Nevada on January 10, 1938, the crew did not hold regular union meetings. It was Rosen who again enforced the union's regulation regarding the holding of regular meetings.

43. Irrespective of what reason Tranberg gave Rosen when he dismissed him on April 19, 1938, the record is clear that Rosen was dismissed on that day for engaging in activities on behalf of the Union.

44. When Rosen was dismissed from the S. S. Nevada on April 19, 1938, he was earning \$85 per month besides receiving free room and board. He remained unemployed until June 1, 1938, when he was rehired by the respondent and assigned to the S. S. Washington. He remained aboard that boat until he was dismissed on July 14, 1938.

45. Rosen, soon after his arrival aboard the S. S. Washington, became the ship's union delegate. In that capacity he presented several grievances of the crew to the captain. Although the captain refused to recognize Rosen as a delegate, the complaints were satisfactorily adjusted. Rosen drafted and later signed the letter (Board Exhibit No. 9) which was circulated throughout the respondent's unlicensed personnel, and also sent to several officials of the respondent. This letter severely criticized the respondent because it refused to improve the working conditions of the crew. Rosen also sent a telegram to Mr. J. P. Roney, the respondent's general marine manager of the marine department, complaining that the captain of the S. S. Washington refused to recognize the union delegates aboard the boat. Rosen also presided over the union meetings which were regularly held aboard the S. S. Washington. His union activities were not kept a secret from the officials of the boat. Those officials knew he was the ship's union delegate and the person most interested in demanding the rights to which the unlicensed members of the crew believed they were entitled.

46. Mr. C. B. Johannesen, the first mate of the S. S. Washington, testified that Rosen was dismissed on account of his poor seamanship and shirking the duties which were assigned to him. However, the record belies Johannesen's testimony. Rosen's union activities were the only cause for his dismissal.

47. At the time of his dismissal, Rosen was earning \$85 per month besides receiving free room and board. Since his dismissal he has had several temporary positions aboard tankers owned by other oil companies. Rosen testified that he desired to be reinstated by the respondent.

48. C. Buckless. Buckless testified that he had been a seaman for approximately 20 years. He was first employed by the respondent in 1925 as boatswain on the S. S. Virginia. However, he did not remain aboard that boat very long and was not in the respondent's employ again until March 1936. At that time he was rehired and assigned to the S. S. Shenandoah as an able-bodied seaman. Between May 1, 1936, when he voluntarily left the S. S. Shenandoah, and November 17, 1937, when he was assigned to the S. S. Nevada, Buckless was intermittently in the respondent's employ.

49. On June 7, 1937, Buckless became a member of the Union and was very active on its behalf. Prior to that time, he was a member of the International Seamen's Union.

50. Soon after joining the crew of the S. S. Nevada, Buckless was promoted to boatswain and

retained that position until he was dismissed by the respondent on April 18, 1938. Even though he was boatswain, Buckless did not neglect his union activities. He presided over the union meetings and was selected delegate of the deck department. In that capacity he, on numerous occasions, presented complaints of the members of the crew to the captain and first mates.

51. Captain Swanson testified that he dismissed Buckless on April 18, 1938, "on account of his drunkenness and bringing liquor on board the ship." Buckless admitted that on numerous occasions he drank intoxicating liquor but swore that he was never intoxicated while aboard the boat. He also swore that at no time was he unable to perform his duties properly.

52. The respondent called several witnesses who testified that on several occasions Buckless was so intoxicated that he could not perform his duties at all. However, all these witnesses, including Captain Swanson and first mate Tranberg, admitted that unlicensed seamen are never discharged for intoxication.

53. The uncontradicted evidence shows that while in one of the ports in Spain, Captain Swanson confiscated several bottles of liquor belonging to Buckless and that on the trip back to the United States the captain gave the liquor back to Buckless. The uncontradicted evidence also shows that other members of the crew, including an officer, came

aboard the boat on several occasions under the influence of liquor. Neither Swanson or Tranberg could remember a single incident when either of them dismissed an unlicensed seamen for being intoxicated.

54. Buckless' union activities first came to the attention of the officers' attention when he presented grievances on behalf of the crew. He testified that at no time would either the captain or the mate recognize him as a union delegate. This they admit. All the complaints, however, were adjusted satisfactorily except one. That complaint was in reference to certain overtime to which the crew thought they were entitled. When Captain Swanson informed Buckless that he was without authority to grant his request, the uncontradicted evidence shows that Buckless was instructed at a union meeting to send a telegram to Mr. Roney demanding the payment of the overtime. Within a short time after the telegram was sent, Buckless was dismissed.

55. It is significant to note at this point that the day following Buckless' dismissal, Rosen was dismissed.

56. The evidence adduced at the hearing leads to the inescapable conclusion that Buckless was dismissed by the respondent on April 18, 1938, for union activities.

57. At the time of his dismissal, Buckless was earning \$100 per month, plus room and board. Until he was rehired by the respondent on June 2, 1938, he was without employment.

58. On June 2, 1938, Buckless was rehired by the respondent as quartermaster aboard the S. S. Washington.

59. While aboard this boat, Buckless continued his union activities with the aid of Rosen, who was also rehired by the respondent at this time as an able-bodied seaman.

60. Although Buckless' work was never criticized adversely while he was aboard the S. S. Washington in 1937, the captain and several mates of the S. S. Washington took the stand and testified about Buckless' poor helmsmanship. They said that Buckless was, at times, 10 degrees off his course. Despite the fact that he was a poor helmsman, his services were retained by the respondent for approximately 6 weeks.

61. The respondent contended that the habitual intoxication of Buckless and his poor helmsmanship was the cause of his dismissal from the S. S. Washington on July 14, 1938.

62. It is to be noted that Buckless was quartermaster aboard the S. S. Washington from February 2, 1937 to March 8, 1937, and at that time neither Captain Bergman nor Johannesen found fault with his helmsmanship or with his drinking. Surely, if Buckless was a habitual drinker, as the respondent tried to show at the hearing, it would not have re-employed him as a quartermaster on June 2, 1938. The evidence is clear that when Buckless was aboard the S. S. Washington in 1937 he did not

engage in any union activities and, therefore, the respondent found no fault with his helmsmanship.

63. Buckless was dismissed from the S. S. Washington on July 14, 1938, for engaging in activities on behalf of the Union. No other conclusion could possibly be arrived at from the evidence adduced at the hearing.

64. At the time of his dismissal, Buckless was earning \$87.50 per month, plus his room and board. Since his dismissal he has had several temporary positions. He desires to be reinstated by the respondent.

65. James P. Blasingame. Blasingame was first employed by the respondent aboard the S. S. Virginia on July 15, 1931 as an able-bodied seaman. He was employed on other boats of the respondent over a period of approximately 6 years.

66. On June 30, 1937, Blasingame was engaged as quartermaster aboard the S. S. California and retained that position until September 19, 1937. The Board contended that on the last-mentioned date, Blasingame was dismissed for union activities. The respondent denies this contention and maintained that Blasingame resigned his position at that time.

67. Sometime in 1934, Blasingame became a member of the International Seamen's Union. After the strike in 1936 and until the fall of 1937, he was a "pledged" member of the Union. Fearing the loss of his job if the officers of the S. S. California

knew of his union affiliations, he endeavored to keep it a secret. He contended at the hearing that shortly after the officers of the boat knew of his union affiliations, he was dismissed.

68. Blasingame testified that he was on the same watch with second mate Baldwin, that is, the watch from 12 to 4 o'clock. He then stated that on numerous occasions during the 12 to 4 o'clock morning watch, Baldwin spoke to him about the Union. He testified that on one occasion the following took place:

"A. Well, he was doing all the discussion, about how he ran that ship, and how they had been running it without having any union men aboard, and about a man that had been on there that had belonged to the union, and got rid of him.

Q. Did he say that?

A. Yes, sir. He mentioned one name, a man I knew, a man by the name of Charlie Horton. He told me he had to get rid of him because he was agitating union all the time.

Q. He said——

A. He said he had to get rid of him because he was agitating union all the time. He asked me what union I belonged to, and I told him I was not discussing unions."

69. He further testified that on another occasion Baldwin said to him that "he belonged to some union out on the west coast, and he got gyped out

of about \$50.00 and he never did get nothing out of it, and he ain't never had any use for a union since."

70. Baldwin, while admitting that he engaged in lengthy conversations with Blasingame, denied making the above quoted and other statements which Blasingame attributed to him. This denial, however, is not in accordance with the evidence as adduced at the hearing. Baldwin had an antipathy for any union among the unlicensed personnel and he was determined to prevent the unionization of the members of the crew of the S. S. California.

71. As soon as Baldwin became apprised of Blasingame's activities, his friendship for the quartermaster waned and the latter was given extra duty to perform without receiving extra compensation therefor.

72. In order to substantiate its contention that Blasingame was not dismissed but that he resigned voluntarily, the respondent called as a witness, Mr. O. D. Mitchell, a former quartermaster of the S. S. California and a bunk mate of Blasingame. He testified as follows regarding a conversation he had with Blasingame on September 19, 1937:

"Q. Did you have a conversation with him (Blasingame) at the time he left?

A. Well, I went into our quarters there and he was packing up and I was asking him why he was getting off or what he was doing packing up and he just told me he was getting off; that he didn't like the ship.

Q. Did he say he was fired?

A. No, sir. I was a bit surprised to see him packing up because I knew that he had said on the trip going north how much more money he had to have and I knew that he didn't have that much at the time.

Q. Did you ask him whether he was leaving of his own accord or whether he was fired?

A. I asked him why he was getting off. I knew that he had no reason to be packing up unless he wanted to get off himself. I couldn't understand why he all of a sudden was packing up. He hadn't said anything about it before."

73. However, Blasingame testified that he did not leave the boat on his own volition but that he was dismissed. He stated that soon after he and Rosen conferred as union delegates with the captain of S. S. California regarding certain overtime to which the members of the crew thought they were entitled, he was dismissed by Baldwin with this statement: "You can't ride this ship any more. Go ride one of your rank and file ships." Baldwin denied making this statement but his copious denials make his testimony unworthy of belief.

74. The record is clear that Blasingame was dismissed by the respondent September 19, 1937, for engaging in union activities. Since his dismissal Blasingame has had several temporary positions. He desires to be reinstated by the respondent.

75. A. P. Lortie. Lortie has been an able-bodied seaman for upwards of 20 years. He was first employed by the respondent on May 11, 1938, and was assigned as an able-bodied seaman to the S. S. Roanoke.

76. Lortie testified that when he first reported for duty aboard S. S. Roanoke, Mr. Edgar F. Carpenter, the first mate, and he had the following conversation:

“I said, ‘You are the chief mate?’

He said, ‘Yes.’

He said, ‘You are the new A. B.?’

I said, ‘Yes, sir.’

He said, ‘Do you belong to any union?’

I said, ‘Yes, sir. I belong to the N. M. U. Does that make any difference?’

‘Well,’ he said, ‘I will tell you,’ he said, ‘We don’t want any discontent in the crew on account of any union, because,’ he said, ‘we don’t recognize any union.’

‘Well,’ I said, ‘You shall not have it.’ ”

77. As soon as Lortie boarded the boat he became very active on behalf of the Union. He insisted that regular union meetings be held, which had not been done in the past. He openly solicited membership for the Union. He insisted that the minutes of the union meetings be signed by him as chairman of the meeting and by the secretary. He personally posted copies of the minutes on the bulkhead in the petty officers’ mess room. He did not keep his

union activities a secret, which was, without doubt, the reason why he was dismissed by the respondent on July 30, 1938.

78. However, the respondent maintained that Lortie was dismissed because "he was drunk and disorderly."

79. The respondent called several witnesses to substantiate its contention that Lortie boarded the vessel at Charleston, South Carolina, under the influence of liquor. However, Captain Gilbert and Mr. Carpenter testified that the main reason he was dismissed was on account of an altercation which Lortie had engaged in, aboard boat, with a mess boy in Charleston on that day.

80. The credible evidence shows that Lortie and the other union members wanted the three new members of the crew, who boarded the boat at Port Arthur, to join the Union. Two of them flatly refused the invitation and left the boat when it docked at Charleston. Howard Roberie, the mess boy, testified that although he wanted to join the Union the crew would not permit him to do so. He also left the boat at Charleston.

81. Lortie does not deny that he had several drinks of beer while in Charleston but swore that he did not return to the boat under the influence of liquor. Neither does he deny asking the three new members of the crew to join the Union but he does deny that he ever threatened them with bodily harm or otherwise. The testimony clearly

shows that all the union members aboard the boat made overtures to these three to join the Union. However, Lortie was the leader of the Union aboard ship and his dismissal was imperative in order to frustrate the union's organizational plans.

82. Lortie further testified that when he was dismissed the captain said to him: "You are being discharged for being drunk and disorderly and threatening men back there to join the union."

83. Captain Gilbert denied that he made that statement and stated that he dismissed Lortie "for being intoxicated and disorderly in Charleston." The evidence is clear that the respondent does not dismiss the unlicensed seamen for intoxication. In fact, Gilbert admitted that he gave whiskey to some members of the crew from time to time while aboard ship. He also admitted giving beer to Lortie but could not remember giving whiskey to him.

84. The record is clear that Lortie was discharged for union activities and for no other reason.

85. At the time of his dismissal, Lortie was earning \$85 per month, plus board and room. He is now employed but wishes to be reinstated by the respondent.

86. F. W. Zinkiewicz. Zinkiewicz did not appear at the hearing. The evidence which was adduced at the hearing shows that he indulged in union activities. However, there is no evidence at all that he was dismissed "for the reason that" he "joined and/or join a labor organization". The evidence clearly shows that the respondent dis-

missed Zinkiewycz for good and sufficient cause.

87. Rufus H. Andrews. Andrews was first employed by the respondent on March 25, 1938, as an able-bodied seaman. He was assigned to the S. S. Australia. He joined the Union in March 1938.

88. The Board contended that Andrews was dismissed because he engaged in union activities aboard the S. S. Australia. However, the record is clear that he engaged in little, if any, union activities during his short stay aboard the S. S. Australia. It is true that he was delegated by the members of the crew to confer with the captain about a certain grievance which the crew had about coffee. But the Union was not involved in that controversy. The record shows that it was but a grievance which Andrews concocted and which he foisted upon the other members of the crew.

89. Andrews was dismissed for good and just cause.

90. The respondent contended that the shipping articles which the members of the crew are required by law⁶ to sign at the beginning of each voyage is a contract of hire. Therefore, the respondent argues, the members of the crew are not employees within the meaning of the Act. This contention is untenable for the following reasons: (1) the respondent did not make it a practice to terminate the employment at the end of each trip;⁷ (2) all

6. 46 U. S. C. A. Sec. 564 et seq.

7. See *Black Diamond S. S. Corp. v. National Labor Relations Board*, 94 Fed. (2) 875. Cert. denied. 58 S. Ct. 1044.

members of the crew did not sign the articles on the same day; (3) from time to time when new members of the crew were added, they signed the articles as of the dates they entered service; (4) by departing on a subsequent trip, the original articles were automatically renewed; and (5) the working rules of the respondent (Respondent Exhibit No. 12) provide: "All unlicensed personnel with one year of continuous service shall be given an annual vacation of one week with pay. Those in continuous service two years or more shall be given an annual vacation of two weeks with pay."⁸

91. By the discharge and refusal to employ J. Gordon Rosen, C. Buckless, James P. Blasingame and A. P. Lortie, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

92. By the said discharge and refusal to employ the said J. Gordon Rosen, C. Buckless, James P. Blasingame and A. P. Lortie, the respondent has discouraged membership in a labor organization known as the National Maritime Union of America.

IV. Interstate Commerce

93. The respondent is engaged in the manufacture and distribution of gasoline and other petroleum products. The great bulk of the crude oil which is used for the manufacture of petroleum is

8. Showing that it is the respondent's custom to renew the articles automatically.

transported into the State of Texas from the State of New Mexico via a pipe line. Seventy-five per cent of the finished product is shipped out of the State of Texas by means of seagoing tankers designated to points throughout the United States and foreign countries.

94. The activities of the respondent, set forth in Sections I and III above, occurring in connection with the operations of respondent described in Section IV herein, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and foreign countries and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS AND RECOMMENDATIONS

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes that:

1. The respondent, by discharging and refusing to employ J. Gordon Rosen, C. Buckless, James P. Blasingame and A. P. Lortie, and thus discouraging membership in a labor organization known as the National Maritime Union of America, and by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8(1) and Section 2(6) and (7) of the National Labor Relations Act.

2. The respondent, by discharging and refusing to employ J. Gordon Rosen, C. Buckless, James P. Blasingame and A. P. Lortie, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8(3) and Section 2(6) and (7) of the National Labor Relations Act.

3. The respondent, by discharging and refusing to employ F. W. Zinkiewicz and Rufus H. Andrews, as set forth in the above findings of fact, has not engaged in an unfair labor practice within the meaning of the National Labor Relations Act.

Wherefore, the undersigned recommends that:

1. The respondent cease and desist from interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form, join or assist the National Maritime Union of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

2. The respondent cease and desist from discouraging membership in the National Maritime Union of America, or any other labor organization, by discriminating in regard to hire or tenure of employment or condition of employment as hereinabove more fully set forth.

3. In order to effectuate the policies of the Act, the respondent take the following affirmative action:

(a) Offer to J. Gordon Rosen, C. Buckless, James P. Blasingame and A. P. Lortie, immediate and full reinstatement to their former positions without prejudice to their seniority and other rights and privileges;

(b) Make whole the said J. Gordon Rosen for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to that which he would have earned as wages or salary during the periods from September 18, 1937 to January 10, 1938, and from April 9, 1938 to June 1, 1938, and from July 14, 1938 to the date of offer of reinstatement, less any amount he may have earned during such periods;

(c) Make whole the said C. Buckless for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to that which he would have earned as wages or salary during the periods from April 18, 1938 to June 2, 1938, and from July 14, 1938 to the date of offer of reinstatement, less any amount he may have earned during such periods;

(d) Make whole the said James P. Blasingame and A. P. Lortie for any losses of pay they may have suffered by reason of the respondent's discrimination in regard to their hire or tenure of employment, by payment to each of them of a sum of money equal to that which he would have earned as wages or salary during the period from the date

of such discrimination to the date of offer of reinstatement, less any amount he may have earned during such period;

(e) Post immediately in conspicuous places at its place of business at Port Arthur, Texas, and maintain for a period of at least sixty (60) consecutive days, notices to its employees, stating that the respondent will cease and desist in the manner aforesaid; and

(f) File with the Regional Director for the Sixteenth Region on or before ten (10) days from the receipt of this Intermediate Report, a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

It is recommended that the complaint be dismissed as to F. W. Zinkiewicz and Rufus H. Andrews.

Request for the privilege of filing briefs with or presenting oral argument before the National Labor Relations Board upon issues raised by any exceptions to this report or on any other issues upon which it is desired to file a brief or present oral argument must be made to the Board, Shoreham Building, Washington, D. C., within ten (10) days from the receipt of this Intermediate Report.

HOWARD MYERS

Trial Examiner

Dated: May 1, 1939

[Title of Board and Cause.]

STATEMENT OF EXCEPTIONS OF RESPONDENT, THE TEXAS COMPANY, TO THE INTERMEDIATE REPORT OF THE TRIAL EXAMINER, AND TO THE RECORD.

The Texas Company, respondent in the above-entitled proceeding, hereby takes exception to the Intermediate Report, dated May 1, 1939, filed by Howard Myers, Trial Examiner, and to certain portions of the record herein, including exceptions to rulings of the Trial Examiner upon motions and objections to evidence, as follows:

I.

Respondent excepts to the Trial Examiner's denial of the following motions:

1. Respondent's motion to dismiss the complaint made at the close of the Board's case on the ground no cause of action was alleged or proved (R. 1969-1971).

2. Respondent's motion to dismiss the complaint made at the close of the entire case on the ground no cause of action was alleged or proved (R. 2281, 2282; Intermediate Report, p. 3).

3. Respondent's motion to strike out the testimony of Board's witness Lortie relative to a conversation he had with an ordinary seaman outside a beer saloon in North Charleston, South Carolina, on the ground such evidence was hearsay and did not take place in the presence of an officer of Respondent's vessel (R. 932-934).

4. Respondent's motion to strike out the testimony of Board's witness Ames relative to difficulties in securing passes to board Respondent's vessels, on the ground he did not personally contact representatives of Respondent (R. 68, 69).

5. Respondent's motion to strike out the testimony of Board's witness J. Gordon Rosen that seaman Leslie Thompson told him (Rosen) that "The mate told me you are fired", as well as other conversations between Thompson and Rosen respecting the reasons for Rosen leaving the S/S California, on the ground such conversations did not take place in the presence of an officer of the vessel (R. 149, 150).

6. Respondent's motion to strike out the following testimony of Board's witness J. Gordon Rosen as to what seaman Alfred Wukasch said to him:

"Q. (By Mr. Martin) Can you explain that please? A. Yes, sir. I asked why the meeting had not been held on the ship. Alfred Wukasch told me that when they held a meeting and elected delegates, the delegates got fired; and, therefore, they didn't think there was much reason to have meetings.

Mr. Williams: I move to strike that testimony for the same reason.

Trial Examiner Myers: Denied.

Mr. Williams: Exception" (R. 200).

7. Respondent's motion to strike out the testimony of Board's witness J. Gordon Rosen respect-

ing telegrams and a letter sent by members of the crew of the S/S Washington to the New York Office of Respondent, on the ground there is no evidence that such telegrams and letter were ever received by Respondent (R. 221, 222).

8. Respondent's motion to strike out the testimony of Board's witness J. Gordon Rosen respecting the rules and practice of the Seamen's Church Institute in regard to the hiring of seamen, on the ground such evidence was irrelevant and immaterial (R. 244, 245).

9. Respondent's motion to strike out the testimony of Board's witness J. Gordon Rosen as to talks he had with the captains of Respondent's vessels as a representative of the seamen on such vessels, on the ground such evidence was immaterial and irrelevant in view of the admission by Union's counsel that Rosen had no authority to bind the National Maritime Union (R. 304, 306).

10. Respondent's motion to strike out the following testimony of Board's witness George Hart:

"Q. (By Mr. Wright) Now, Mr. Hart, to whom did he refer about having gotten rid of him yesterday? A. I suppose he meant Buckless. He had fired Buckless yesterday.

Q. Had he gotten rid of anybody else besides Buckless the day before? A. Yes, an ordinary seaman, but I don't know what his name was; a rather peculiar name.

Mr. Van Dusen: Mr. Examiner, I move that the answer, 'I suppose he meant Buckless,' be

stricken, since he now says there were two men, and he can't tell which it was" (R. 459).

11. Respondent's motion to strike out the following testimony of Board's witness Blasingame:

"Q. Did you hear that conversation which the engineer also heard? A. I heard parts of it.

Q. You heard parts of it? A. Yes.

Q. Was that about the benefits of the union? A. Well, they were talking—the second pumpman was talking to the chief pumpman.

Q. Yes. A. Wanted to know when and why he didn't join the N. M. U. or some union.

Trial Examiner Myers: Why who didn't join the union; the N. M. U. or some union?

A. The chief pumpman. His name is Dempsey.

Mr. Williams: In order to preserve our exception we move to strike the testimony of this witness in that particular for the reason that it is not shown that the conversation occurred in the presence of any officer of the vessel" (R. 511-514).

12. Respondent's motion to strike out the following testimony of Board's witness Blasingame:

"Q. (By Mr. Martin) Now, in these conversations after the one where you denied that you were a union man, in those conversations afterwards, do you believe that Mate Baldwin knew that you were a union man? A. We went

up and had the conversation with the captain, he knew it then.

Trial Examiner Myers: That was the first time he knew it, is that right?

Q. (By Mr. Martin) You believe that was the first time he knew it? A. Was sure of it. He might have been suspicious.

Mr. Van Dusen: I move to strike it. He is asking whether he knows that someone else believes.

Trial Examiner Myers: Motion denied. It is in now. Let's have no more of it.

Mr. Van Dusen: Exception'' (R. 595).

13. Respondent's motion to strike out the following testimony of Board's witness Buckless:

“Q. Did you see any members of the crew on the way? A. Yes. I seen several of them and told them of my downfall. Well, they wanted to set the ship down.

Q. Did they seem excited about it? A. Yes, they did.

Q. About the fact that you had been discharged? A. Yes, sir. Well, I told them that I thought that it would be better if they stayed aboard the ship and not say anything and I would file my case with the National Labor Board as I was fired for nothing but union activities as far as I could see; they knew that I was delegate on that ship and there had been

rumors around before that I was getting short on there.

Mr. Van Dusen: I move to strike it out as not responsive and as not made in the presence of an officer of the ship.

Trial Examiner Myers: Motion denied.

Mr. Van Dusen: Exception'' (R. 668).

14. Respondent's motion to strike out the testimony of Board's witness J. Gordon Rosen describing meetings of ships' crews and conversations he had with the Masters and other officers of the S/S Nevada and the S/S Washington, on the ground such conversations are hearsay and that the notes from which Rosen read were not used to refresh his recollection (R. 1953, 1954; Intermediate Report p. 2).

15. Respondent's motion to strike out the testimony of all witnesses for the Board relative to conversations between Board's witnesses and the Masters or officers of Respondent's vessels or any officer or agent of Respondent in respect to labor union matters or labor union activities (R. 2270; Intermediate Report p. 2).

16. Respondent's motion to strike out the following testimony of Board's witness Buckless as to conversations he had with Chief Engineer Dilbert:

“Q. Did he say anything about your getting fired or as to why you got fired from the ‘Nevada’?

Trial Examiner Myers: Give us the substance of the conversation. Of course you can't remember the exact words.

A. No. Well, as we were talking, he says 'What did you get fired for?'

And I says 'I was delegate on that ship, and fired for union activities. And that afternoon or evening, Gordon Rosen was elected delegate, and the following day he got fired, so it was nothing more than union activities that I could see that we were fired for.'

Q. (By Mr. Williams) That was your opinion? A. No, we were talking.

Q. That is the opinion you expressed to Dilbert? A. It was the only thing.

Q. Was that the opinion you expressed to Dilbert? A. Yes.

Mr. Williams: Then I move it be stricken.

Trial Examiner Myers: No, he is repeating the conversation he had with the chief engineer. I will deny the motion" (R. 698).

17. Respondent's motion to strike out the testimony of Board's witness Buckless relative to obtaining employment on Respondent's vessels through the Seamen's Church Institute (R. 876, 878, 879).

18. Respondent's motion to strike out the following testimony of Board's witness J. Gordon Rosen:

“Trial Examiner Myers: Have you any reason to believe that Dave knew that you were a member of the union?”

A. Yes, sir, I do believe he knows that I am a member of the union, because when I left the SS ‘California’ and I went on the SS ‘Gulfbell’ and the SS ‘Gulfgem’ and I left that ship just before Christmas last year, Dave wanted to see my discharges before he would register me and he knows that the Gulf ships are N. M. U. ships; were at that time; and I showed him my discharges from the Gulf Company.

Mr. Van Dusen: Well, I move to strike it out as not responsive. The discharge slip would be the best evidence of that, as to whether it shows that he is an N. M. U. man.

Trial Examined Myers: Motion denied.

Mr. Van Dusen: Exception” (R. 417, 418).

II.

Respondent excepts to the following rulings on evidence made by the Trial Examiner:

19. Overruling of Respondent’s objection to testimony of Board’s witness J. Gordon Rosen as to what seaman Leslie Thompson told him about Rosen having been “fired”, on the ground such evidence did not take place in the presence of an officer of Respondent’s vessel (R. 149; 150).

20. Overruling of Respondent’s objection to the testimony of Board’s witness J. Gordon Rosen as

to what seaman Wukasch said to him regarding union meetings on the S/S Washington and the "firing" of union delegates, on the ground such evidence was hearsay and did not take place in the presence of any officer of Respondent's vessel (R. 200).

21. Overruling of Respondent's objection to testimony of Board's witness Buckless as to what was said in the presence of Chief Engineer Dilbert, on the ground such evidence was hearsay and did not take place in the presence of an officer of Respondent's vessel (R. 204; 207).

22. Overruling of Respondent's objection to testimony of Board's witness J. Gordon Rosen as to what seaman Zinkiewycz told him regarding Rosen having been "fired", on the ground such evidence did not take place in the presence of an officer of Respondent's vessel (R. 210).

23. Overruling of Respondent's objection to the admission in evidence of telegrams alleged to have been sent to Respondent by the crew of the S/S Washington, on the ground there was no proof such telegrams were ever received by Respondent (R. 222).

24. Overruling of Respondent's objection to the admission in evidence of testimony as to the rules and practice of Seamen's Institute in regard to the hiring of seamen, on the ground such evidence was irrelevant and immaterial (R. 244, 245).

25. Sustaining of Board's objection to questioning by Respondent's counsel of Board's witness J.

Gordon Rosen regarding his authority to bargain as a representative of the Union (R. 299).

26. Sustaining of Board's objection to questioning by Respondent's counsel of Board's witness Blasingame as to his union affiliations (R. 541).

27. Sustaining of Board's objection to questioning by Respondent's counsel of Board's witness Blasingame as to when he filed his complaint against Respondent with the Labor Board (R. 563).

28. Sustaining of Board's objection to questioning by Respondent's counsel of Board's witness Blasingame as to why he delayed filing his complaint against Respondent until June, 1938 (R. 569).

29. Overruling of Respondent's objection to testimony of Board's witness Blasingame regarding the policy of the Union in respect to the hiring of seamen through places like "Mrs. Mitchal's" (R. 616).

30. Sustaining of Board's objection to questioning by Respondent's counsel of Board's witness Buckless as to the real reason for his wanting to get on Respondent's vessels (R. 853).

31. Overruling of Respondent's objection to questioning by Board's counsel of Respondent's witness Swanson as to whether a certificate of discharge must be signed in the presence of the Master of the vessel, on the ground such questioning called for a legal conclusion (R. 1674-1676).

32. Overruling of Respondent's objection to testimony by Respondent's witness Hopper as to how he could tell whether a man is a habitual drunkard (R. 1734).

33. Overruling of Respondent's objection to questioning by Board's counsel of Respondent's witness Gilbert as to the legal effect of a discharge certificate (R. 1863, 1864).

34. Overruling of Respondent's objection to the following testimony of Board's witness J. Gordon Rosen respecting conversations between seamen Blasingame, Myers and Vest and other members of the crew:

“Q. Did you hear any conversations between James Blasingame and any officer of the Company on deck?

A. Not of any officer of the Company. I saw James Blasingame talking to the mate and later on he went back in the forecastle and the members of the deck crew were assembled there and James Blasingame asked us——

Mr. Van Dusen: Just a minute. I object, because this is not in the presence of any officer of the ship. It is hearsay; not binding on the respondent. He said James Blasingame went back and talked to the members of the crew.

Trial Examiner Myers: I overrule the objection.

Mr. Van Dusen. Take an exception.

A. (Continuing) James Blasingame said, 'Did that mate say anything to you fellows when you came aboard the ship?' Another fellow by the name of Meyers——

Mr. Van Dusen: The same objection to what Meyers said.

Trial Examiner Myers: Overruled.

A. (Continuing) He said, 'Yes, the mate said something to me.'

And Blasingame said, 'The mate told me that he wouldn't stand for any drunkenness on this ship, missing watches, and any agitating the crew on union matters.'

Myers said, 'He told me the same thing,' and another A.B. by the name of Vest said, 'The mate told me the same thing.'

Mr. Van Dusen: I object to that. It is the same thing.

Trial Examiner Myers: I understand that you have an objection to this whole line of testimony.

Mr. Van Dusen: Thank you.

Trial Examiner Myers: I overrule the objection and ask the reporter to please note an exception to my ruling" (R. 131, 132).

35. Overruling of Respondent's objection to testimony of Board's witness J. Gordon Rosen as to what seaman Smith said to another seaman respecting the attitude of the union toward Mate Baldwin, on the ground such testimony was hearsay and did

not take place in the presence of any officer of Respondent's vessel (R. 139).

36. Overruling of Respondent's objection to the admission in evidence of Board's Exhibit "8", which is a circular letter written by Board's witness J. Gordon Rosen as a member of the crew of the S/S Nevada to crews of other vessels of Respondent, on the ground there was no proof of knowledge of such letter on the part of Respondent and that it is irrelevant and immaterial (R. 183-185).

37. Overruling of Respondent's objection to testimony of Board's witness J. Gordon Rosen as to conversations between Rosen and other members of the crew relative to union activities, on the ground such evidence was hearsay and did not take place in the presence of officers of Respondent's vessels (R. 203, 204, 207, 208, 216, 221).

38. Overruling of Respondent's objection to the admission in evidence of Board's Exhibit "9", which is an open letter sent by the crew of the S/S Washington to crews on other vessels of Respondent's vessels, on the ground there was no proof of knowledge of such letter on the part of Respondent and that it is irrelevant and immaterial (R. 238, 240).

39. Sustaining of Board's objection to the questioning by Respondent's counsel of Board's witness J. Gordon Rosen relative to his authority to represent the union in bargaining matters (R. 295-299).

40. Overruling of Respondent's objection to the question asked Board's witness J. Gordon Rosen as to whether he (Rosen) had "any reason to believe that Dave knew that you were a member of the union" (R. 417, 418).

41. Sustaining of Board's objection to questioning by Respondent's counsel of Board's witness Blasingame as to whether he told the union he wished to file a complaint against Respondent at the time he went to the Union Hall for his membership book (R. 563).

42. Sustaining of Board's objection to the following question asked Board's witness Blasingame by Respondent's counsel:

"Q. Now, isn't it a fact, Mr. Blasingame, that the reason you filed your complaint personally with the Labor Board was because you were unemployed at the time?" (R. 569).

43. Overruling of Respondent's objection to the following question asked of Board's witness Blasingame:

"Q. (By Mr. Martin) Mr. Blasingame, do you know what the union thinks of places like Mrs. Mitchal's?" (R. 615, 617).

44. Overruling of Respondent's objection to testimony of Board's witness Buckless as to what the first pumpman on the S/S Washington said to him about a conversation with Chief Engineer Dilbert, on the ground such evidence was hearsay and did not take place in the presence of any officer of Respondent's vessel (R. 645).

45. Sustaining of Board's objection to questioning by Respondent's counsel of Respondent's witness Carr as to the circumstances surrounding Buckless' court martial while in the U. S. Navy and his subsequent dishonorable discharge (R. 2095 to 2098, 2104, 2106, 2107).

III.

Respondent excepts to each of the following findings of fact in the Intermediate Report of the Trial Examiner:

46. The finding in the first paragraph on page 4 of the Intermediate Report, under the caption "The Issues Involved", that:

"It is also the contention of the Board (1) that the captains, mates and other officers of the several hereinabove-mentioned boats, made disparaging remarks to the respondent's employees from time to time regarding the Union; (2) that these remarks were made for the sole purpose of discouraging membership in the said Union; and (3) that the respondent discriminated against the Union when hiring unlicensed seamen."

47. The finding in paragraph numbered "18" that:

"Because it was, and it still is, the respondent's policy to refuse permission to a delegate or a representative of any labor organization to board its boats in order to conduct organizational activities, the union could only obtain

new members by having its members solicit membership and by having its members distribute union literature aboard the respondent's boats."

48. The finding in paragraph numbered "19" that:

"The record is clear that on account of the respondent's said policy, the Union has been handicapped in its efforts to obtain new members. Moreover, because of the respondent's antipathy toward labor unions among its unlicensed personnel, at least four union members were discharged for union activities."

49. The finding in paragraph numbered "20" that:

"The four union members who were discharged by the respondent for union activities, as will be more fully related below, were members of the crew of the S.S. Washington, S.S. Nevada, S.S. California, and the S.S. Roanoke. The captains, mates and others who were in the respondent's employ in a supervisory capacity aboard the aforementioned boats were openly and outspokenly adverse to any union activities aboard the boats. The statements which were attributed to them by the Board's witnesses clearly show that they intended to allow no union to get a foothold upon their boats."

50. The finding in paragraph numbered "21" that prior to the arrival of Buckless, Rosen and

Zinkiewicz no union meetings were held aboard the S/S Washington.

51. The finding in paragraph numbered "22" that:

"Union activities aboard the S.S. Roanoke were at a standstill until the advent of Lortie. His stay aboard the boat was likewise short-lived. The details of his dismissal are also set forth below."

52. The finding in paragraph numbered "23" that:

"Rosen's arrival aboard the S.S. Nevada and the S.S. California brought new life to the Union and under his leadership regular union meetings were again started. As soon as Rosen's and Blasingame's activities and affiliations on behalf of the Union became known to the captain and the mates of the S.S. California, the services of both Rosen and Blasingame were soon dispensed with by the respondent."

53. The finding in paragraph numbered "24" that:

"In order to frustrate the union's plans to organize the unlicensed personnel aboard the respondent's boats, the captains and the mates of the S.S. Washington, S.S. Nevada, S.S. California and S.S. Roanoke made many disparaging remarks about the Union to the members of the crew."

54. The finding in paragraph numbered "25" that:

"The Board's witnesses attributed many other similar remarks to the officers of the various respondent's ships, most of which remarks were denied by them. It is highly improbable that all the Board's witnesses were not telling the truth. The undersigned finds that the statements attributed to the said captains and mates were made by them and were made for the sole purpose of discouraging membership in the Union."

55. The finding in paragraph numbered "26" that several of the "dismissed" employees, when they arrived on their respective vessels for the first time, "were warned at that time by the officials of the boat that no union activities would be permitted aboard the boat."

56. The finding in paragraph numbered "27" that:

"By the activities hereinabove described, the respondent has interfered with, restrained and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act."

57. The finding in paragraph numbered "28" that:

"By the said activities, the respondent has discouraged membership in a labor organization known as the National Maritime Union of America."

58. The finding in paragraph numbered "31" that J. Gordon Rosen became active in union matters in the Spring of 1937 and that at that time he "openly circulated union literature and openly solicited members."

59. The finding in paragraph numbered "35" that the record reveals, that "not only did Baldwin advise Rosen against indulging in union activities but that he also warned other members of the crew to the same effect."

60. The findings in paragraph numbered "36" that:

(1) "Rosen indulged in union activities and, in fact, was selected by the crew on several occasions to present their grievances to the Captain"

(2) "the Captain refused to recognize Rosen as the crew's delegate"

(3) "Rosen also started anew the holding of regular union meetings which were neglected prior to his coming on board."

61. The finding in paragraph numbered "37" that "In fact, the record shows that Rosen was highly praised, at times, for his seamanship."

62. The finding in paragraph numbered "38" that:

"The credible evidence shows that Rosen was dismissed because he failed to heed the warning given to him by Baldwin."

63. The finding in paragraph numbered "39" that between the period September 18, 1937 to Jan-

uary 10, 1938, the positions Rosen had with the Gulf Company were "temporary".

64. The finding in paragraph numbered "41" that "The uncontradicted evidence shows that Rosen does not smoke tobacco in any form."

65. The findings in paragraph numbered "42" that:

(1) "The evident reason for Rosen's dismissal was his activities on behalf of the Union."

(2) "He openly solicited members and he openly distributed union literature among members of the crew."

(3) "It was Rosen who again enforced the union's regulation regarding the holding of regular meetings."

66. The finding in paragraph numbered "43" that:

"Irrespective of what reason Tranberg gave Rosen when he dismissed him on April 19, 1938, the record is clear that Rosen was dismissed on that day for engaging in activities on behalf of the Union."

67. The findings in paragraph numbered "45" that:

(1) Board Exhibit No. 9 was "circulated throughout the respondent's unlicensed personnel, and also sent to several officials of the respondent."

(2) "Rosen sent a telegram to Mr. J. P. Roney, the respondent's general marine manager of the marine department, complaining that the Captain of the S. S. Washington refused to recognize the union delegates aboard the boat."

(3) Rosen's "union activities were not kept a secret from the officials of the boat. Those officials knew he was the ship's union delegate and the person most interested in demanding the rights to which the unlicensed members of the crew believed they were entitled."

68. The finding in paragraph numbered "46" that:

"However, the record belies Johannesen's testimony. Rosen's union activities were the only cause for his dismissal."

69. The finding in paragraph numbered "47" that since his dismissal the positions Rosen had aboard tankers owned by other oil companies were "temporary".

70. The finding in paragraph numbered "50" that Buckless presented complaints of the members of the crew to the Captain and first mates of the S/S Nevada on "numerous" occasions.

71. The finding in paragraph numbered "52" that:

"However, all these witnesses, including Captain Swanson and first mate Tranberg, admitted that unlicensed seamen are never discharged for intoxication."

72. The finding in paragraph numbered "53" that:

"The uncontradicted evidence also shows that other members of the crew, including an officer, came aboard the boat on several occasions under the influence of liquor. Neither Swanson or Tranberg could remember a single incident when either of them dismissed an unlicensed seaman for being intoxicated."

73. The finding in paragraph numbered "54" that the Captain and mate of the S/S Nevada admitted that they would at no time recognize Buckless as a union delegate.

74. The finding in paragraph numbered "56" that:

"The evidence adduced at the hearing leads to the inescapable conclusion that Buckless was dismissed by the respondent on April 18, 1938, for union activities."

75. The finding in paragraph numbered "60" that Buckless' services were retained by the respondent for approximately 6 months "despite the fact that he was a poor helmsman".

76. The finding in paragraph numbered "62" that:

"The evidence is clear that when Buckless was aboard the S.S. Washington in 1937 he did not engage in any union activities and, therefore, the respondent found no fault with his helmsmanship."

77. The finding in paragraph numbered "63" that:

"Buckless was dismissed from the S.S. Washington on July 14, 1938, for engaging in activities on behalf of the Union. No other conclusion could possibly be arrived at from the evidence adduced at the hearing."

78. The finding in paragraph numbered "64" that since his dismissal the several positions Buckless had were "temporary".

79. The finding in paragraph numbered "67" that Blasingame endeavored to keep his union affiliations a secret for fear of the loss of his job.

80. The finding in paragraph numbered "70" that Baldwin's denial of conversations with Blasingame is not "in accordance with the evidence as adduced at the hearing" and that "Baldwin had an antipathy for any union among the unlicensed personnel and he was determined to prevent the unionization of the members of the crew of the S.S. California."

81. The finding in paragraph numbered "71" that:

"As soon as Baldwin became apprised of Blasingame's activities, his friendship for the quartermaster waned and the latter was given extra duty to perform without receiving extra compensation therefor."

82. The finding in paragraph numbered "73" that:

"Baldwin denied making this statement but his copious denials make his testimony unworthy of belief."

83. The finding in paragraph numbered "74" that "the record is clear that Blasingame was dismissed by the respondent September 19, 1937, for engaging in union activities" and that since his "dismissal" the several positions Blasingame had were "temporary".

84. The finding in paragraph numbered "77" that Lortie "did not keep his union activities a secret, which was, without doubt, the reason why he was dismissed by the respondent on July 30, 1938."

85. The finding in paragraph numbered "80" that:

"Howard Roberie, the mess boy, testified that although he wanted to join the union the crew would not permit him to do so."

86. The finding in paragraph numbered "81" that:

"The testimony clearly shows that all the union members aboard the boat made overtures to these three to join the Union. However, Lortie was the leader of the Union aboard ship and his dismissal was imperative in order to frustrate the union's organizational plans."

87. The finding in paragraph numbered "83" that:

"The evidence is clear that the respondent does not dismiss the unlicensed seamen for intoxication."

88. The finding in paragraph numbered "84" that:

"The record is clear that Lortie was discharged for union activities and for no other reason."

89. The finding in paragraph numbered "90" that respondent's contention, that members of respondent's crews are not employees because of the signing of shipping articles, is untenable.

90. The finding in paragraph numbered "91" that:

"By the discharge and refusal to employ J. Gordon Rosen, C. Buckless, James P. Blasingame and A. P. Lortie, the respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act."

91. The finding in paragraph numbered "92" that:

"By the said discharge and refusal to employ the said J. Gordon Rosen, C. Buckless, James P. Blasingame, and A. P. Lortie, the respondent has discouraged membership in a

labor organization known as the National Maritime Union of America.”

92. The finding in paragraph numbered “94” that:

“The activities of the respondent, set forth in Sections I and III above, occurring in connection with the operations of respondent described in Section IV herein, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and foreign countries and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.”

IV.

Respondent excepts to the failure of the Trial Examiner to include in the Intermediate Report each and all of the following findings of fact:

93. The Rosen, Buckless, Blasingame and Lortie all signed shipping articles as required by law and said shipping articles were contracts of hire extending for a specified period of time as provided for therein.

94. That the shipping articles signed by Rosen, Buckless, Blasingame and Lortie in each case expired by their terms on the respective dates said individuals contend they were dismissed from Respondent’s employ for union activities, and that, therefore, no basis exists for claims of unlawful discharge on the part of said individuals.

95. That J. Gordon Rosen was not dismissed

from Respondent's vessel, the S/S California, on September 19, 1937, but voluntarily quit said vessel.

96. That if J. Gordon Rosen was dismissed by Respondent from the S/S Nevada on April 19, 1938, and from the S/S Washington on July 14, 1938, his dismissals from said vessels were for incompetency and unwillingness to work, and not for union activities.

97. That after leaving the S/S California on September 18, 1937 and the S/S Washington on July 14, 1938, Rosen obtained other regular and substantially equivalent employment elsewhere.

98. That if Buckless was dismissed from the S/S Nevada on April 18, 1938, and from the S/S Washington on July 14, 1938, his dismissals from said vessels were primarily on account of habitual drunkenness, and not for union activities.

99. That after his dismissal from the S/S Washington on July 14, 1938, Buckless obtained other regular and substantially equivalent employment elsewhere.

100. That Blasingame was not dismissed from Respondent's vessel, the S/S California, on September 19, 1937, but voluntarily quit said vessel.

101. That after leaving the S/S California on September 18, 1937, Blasingame obtained other regular and substantially equivalent employment elsewhere.

102. That if Lortie was dismissed from the S/S Roanoke on July 30, 1938, his dismissal was for being drunk and disorderly, and not for union activities.

V.

103. Respondent excepts to each and every conclusion and recommendation contained in the Intermediate Report of the Trial Examiner under the caption "Conclusions and Recommendations", except the conclusions and recommendations in respect to F. W. Zinkiewicz and Rufus H. Andrews, all on the ground as being wholly unsupported by any evidence or any substantial evidence and contrary to law and the constitutional rights of this Respondent.

VI.

104. Respondent excepts to each and every conclusion of law and expression of opinion of the Trial Examiner embodied in and termed by the Examiner "Findings of Fact".

VII.

105. Respondent excepts to all other findings, conclusions, recommendations, and rulings on motions, on the introduction, offer, and exclusion of evidence, which were adverse to Respondent, and which were made by the Trial Examiner or the Board, and to which exception is not otherwise specifically taken herein.

Dated: New York, N. Y., June 13, 1939.

Respectfully submitted,

ALBERT E. VAN DUSEN,

Attorney for Respondent,

The Texas Company,

135 East 42nd Street,

New York, N. Y.

United States of America Before the National
Labor Relations Board

In the Matter of
THE TEXAS COMPANY, MARINE DIVISION¹
and
NATIONAL MARITIME UNION, PORT
ARTHUR BRANCH

Case No. C-1276

Decided January 24, 1940

Petroleum Products Distribution Industry—Interference, Restraint, and Coercion: anti-union statements by supervisory employees: warning employees against organization; threatening to discharge union members; questioning employee about membership in union; respondent's refusal to permit all persons not in its employ, including union representatives, to board its ships held not to be a violation of the Act—Discrimination: discharge and refusal to reinstate two employees found discriminatory; charges of discriminatory discharge and refusal to reinstate four other employees dismissed—Employee Status: termination of voyage as affecting—Reinstatement Ordered: one employee discriminatorily discharged and not reinstated—Back Pay: awarded to employees discriminated against, including reasonable value of board and maintenance.

¹As noted below, the complaint was issued against "The Texas Company" rather than "The Texas Company, Marine Division."

Mr. E. P. Davis and Mr. Alba Burnham Martin, for the Board.

Mr. A. E. Van Dusen, of New York City, Mr. James H. Pipkin, of Houston, Tex., and Mr. J. W. Williams, of Port Arthur, Tex., for the respondent.

Mandell & Combs, by Mr. Herman Wright, Mr. W. A. Combs, Mr. Arthur J. Mandell, and Mr. Otto Mullinax, of Houston, Tex., and Mr. Max Lustig, of New York City, for the Union.

Mr. Ben Law, of counsel to the Board.

DECISION AND ORDER

Statement of the Case

Upon amended charges duly filed by National Maritime Union of America,² Port Arthur Branch, herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Sixteenth Region (Fort Worth, Texas) issued its complaint dated September 3, 1938, against The Texas Company, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. A copy of the complaint ac-

²This is the correct designation of the Union. As used herein, "Union" also refers to National Maritime Union, Port Arthur Branch, as the Union has previously been designated in this proceeding.

accompanied by notice of hearing was duly served upon the respondent and upon the Union.

In respect to the unfair labor practices the complaint alleged in substance that the respondent discharged and refused to reinstate 10 of its employees³ for the reason that they, and each of them, joined and/or assisted the Union and engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection, thereby discriminating in regard to hire and tenure of employment of these employees and discouraging membership in the Union; that since on or about August 1, 1937, the respondent, through its officers, agents, and employees, has made various and sundry statements to its employees discouraging affiliation in or activity on behalf of the Union; that through its officers,

³The complaint listed the employees allegedly discharged, the dates of the alleged discharges, and the ships from which they took place, as follows: F. W. Zinkiewicz, April 18, 1938, S. S. Rhode Island; D. C. MacClennan, April 17, 1938, S. S. Rhode Island; C. Buckless, April 18, 1938, S. S. Nevada; J. Gordon Rosen, April 19, 1938, S. S. Nevada; F. W. Zinkiewicz, July 14, 1938, S. S. Washington; C. Buckless, July 14, 1938, S. S. Washington; J. Gordon Rosen, July 14, 1938, S. S. Washington; James P. Blasingame, September 19, 1937, S. S. California; Arthur Spencer, September 19, 1937, S. S. California; J. Gordon Rosen, September 19, 1937, S. S. California; A. P. Lortie, July 30, 1938, S. S. Roanoke; John Helton, July 30, 1938, S. S. Roanoke; C. T. Adams, July 30, 1938, S. S. Roanoke; R. M. Lyons, July 17, 1938, S. S. Roanoke.

agents, and employees the respondent has denied passes to representatives of the Union to board the respondent's vessels in order to contact members of the Union; and that by the afore-mentioned and other acts the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On September 12, 1938, the respondent filed its answer and its amended answer to the complaint in which it denied that it had engaged in unfair labor practices, but admitted that certain of the employees named had been discharged and refused reinstatement.⁴ In its amended answer the respondent also admitted that it has denied passes to representatives of the Union to board its vessels, but averred that such denial had not in any way been discriminatory.

Pursuant to notice a hearing was held at Port Arthur, Texas, from September 12 to 16 and 19 to 22, 1938, before Howard Myers, the Trial Examiner duly designated by the Board. The hearing was

⁴The respondent admitted in its amended answer that it had on the dates given discharged the following employees from the following named ships: C. Buckless, April 18, 1938, S. S. Nevada; J. Gordon Rosen, April 19, 1938, S. S. Nevada; F. W. Zinkiewycz, July 14, 1938, S. S. Rhode Island; J. Gordon Rosen, July 14, 1938, S. S. Washington; C. T. Adams, July 30, 1938, S. S. Roanoke; A. P. Lortie, July 30, 1938, S. S. Roanoke; John Helton, July 30, 1938, S. S. Roanoke; C. Buckless, July 14, 1938, S. S. Washington.

continued at Port Arthur, Texas, on November 28 and 29, 1938, before Charles E. Persons, another Trial Examiner duly designated by the Board. The Board, the respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the beginning of the hearing, the Board moved to amend its complaint to include an allegation that the respondent discharged and refused to reinstate two men⁵ not previously named therein for the reason, among others, that they had joined and/or assisted the Union. The Trial Examiner granted the motion without opposition. With the consent of all parties the respondent's answer was deemed amended to include a denial of the charges that the said two men were discharged in violation of the Act. During the course of the hearing, the Board moved to dismiss the amended complaint as to particular alleged discharges of 7 of the 12 employees named.⁶ The Trial Examiner granted the motion

⁵The names of these employees, the dates of the alleged discharges, and the ships from which they took place are: Rufus H. Andrews, July 8, 1938, S. S. Australia; Jack Wilson, March 17, 1938, S. S. Washington.

⁶These seven discharges involved the following employees who were alleged to have been discharged on the following dates from the following ships: F. W. Zinkiewicz, April 18, 1938, S. S. Rhode Island; D. G. MacClennan, April 17, 1938, S. S.

which was not opposed. Also during the course of the hearing the respondent made various motions to dismiss the amended complaint in its entirety; it moved specially to dismiss that portion of the amended complaint which alleged that Rufus H. Andrews and F. W. Zinkiewicz were dismissed by the respondent on July 8, and July 14, 1938, respectively, because they had joined and/or assisted the Union; and it made various motions to strike certain testimony. Decision on these motions was reserved by the Trial Examiner at the hearing. In his Intermediate Report,⁷ discussed below, the Trial Examiner denied the motions to dismiss the amended complaint in its entirety and the motions to strike certain testimony, but granted the motions to dismiss the amended complaint as to Rufus H. Andrews and F. W. Zinkiewicz. At the close of the hearing the Board moved to conform the complaint to the proof. This motion was granted by the Trial Examiner. During the course of the hearing the Trial Examiners made other rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiners and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Rhode Island; Arthur Spencer, September 19, 1937, S. S. California; John Helton, July 30, 1938, S. S. Roanoke; C. T. Adams, July 30, 1938, S. S. Roanoke; R. M. Lyons, July 17, 1938, S. S. Roanoke; Jack Wilson, March 17, 1938, S. S. Washington.

⁷The Intermediate Report was submitted by Trial Examiner Howard Myers.

On May 8, 1938, Trial Examiner Myers filed an Intermediate Report finding that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the Act. He recommended that the respondent cease and desist from its unfair labor practices; that it reinstate with back pay 4 of the 12 employees originally named in the amended complaint; and that it take certain other action to remedy the situation brought about by the unfair labor practices. He dismissed the allegations of the complaint, as above stated, with respect to Rufus H. Andrews and F. W. Zinkiewicz. The respondent filed its request for oral argument before the Board upon the Intermediate Report and the record on May 12, 1939, its Statement of Exceptions to the Intermediate Report and to the record on July 14, 1939, and its Brief in support of the Statement of Exceptions on July 17, 1939.

Pursuant to notice duly served upon the respondent and upon the Union, a hearing for the purpose of oral argument was held on October 24, 1939, before the Board in Washington, D. C. The respondent and the Union were represented by counsel and participated in the argument.

The Board has considered the Exceptions filed by the respondent to the Intermediate Report of the Trial Examiner and to the record and, except in so far as the exceptions are consistent with the findings of fact, conclusions of law, and the Order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The Business of the Respondent

The respondent, The Texas Company, a wholly owned subsidiary of The Texas Corporation, is a Delaware corporation, with its principal business and executive offices located at New York City and Houston, Texas. It is engaged chiefly in the production, distribution, and sale of petroleum products.

The respondent operates refineries in Texas at Galena Park, Port Arthur, and Port Neches. In addition, at Port Neches it operates a factory for the manufacture of roofing materials, barrels, and various other products.

Chief products of the Galena Park refinery are gasoline and fuel oils. The crude oil used in their manufacture comes principally from producing wells in Texas and New Mexico through pipe lines operated by the Texas New Mexico Pipe Line Company. This company is a common carrier with tariffs prescribed by the Interstate Commerce Commission. A majority of its stock is owned by The Texas Corporation. The average daily throughput of the Galena Park refinery is approximately 20,000 barrels of crude oil. Of the finished products, approximately 75 per cent are shipped out of Galena Park via seagoing tankers destined for points outside the State of Texas.

The principal products manufactured at the respondent's Port Neches works are roofing, asphalt, steel barrels, wood barrels, and drums. The principal raw materials used are crude oil, felt, sheet steel, wood staves, slate, paper, and nails. The daily average throughput of crude oil is approximately 25,000 barrels. Most of the crude oil is obtained from Texas and Louisiana, but substantial quantities arrive by tanker and barge from Mexico. All of the felt, slate, sheet steel, and paper is procured from outside Texas.

The unfinished crude distillates from both the Galena Park and Port Neches refineries are pumped to the respondent's Port Arthur refinery where the refining process is completed. In finished form a substantial per cent of the crude-oil distillates pumped to Port Arthur eventually reach a destination outside Texas.

Products of the respondent are in part distributed by means of 2,100 wholesale outlets and over 40,000 retailers located in most of the States of the United States.

Gross receipts of the respondent for the fiscal year ending December 31, 1937, were in excess of \$280,000,000. According to the respondent's franchise tax return to the Secretary of State of Texas, covering the year 1937, over 86 per cent of its business was reported as interstate in character and approximately 13 per cent was reported as intrastate.

The respondent owns, maintains, and operates through its Marine Division approximately 28

oceangoing vessels having an average capacity of 11,000 tons. These vessels are used by the respondent in transporting its petroleum products between various ports of the Gulf of Mexico and other parts of the United States, and to and from Europe, South America, and other points.

II. The Organization Involved

National Maritime Union of America, Port Arthur Branch, is a labor organization affiliated with the Congress of Industrial Organizations. It admits to membership all unlicensed seamen employed by the respondent.

III. The Unfair Labor Practices

A. The refusal to issue passes

On or about November 1, 1936, there was a general strike called in the shipping industry of the United States which lasted until sometime in the early part of January 1937. Immediately after the cessation of the strike a group known as the "rank and file" of the International Seamen's Union, an affiliate of the American Federation of Labor, formed the National Maritime Union of America, which later became affiliated with the Congress of Industrial Organizations.

Soon after its formation the Union began organizing unlicensed seamen employed on the respondent's ships. In this work the Port Arthur branch of the Union was especially active. It is undisputed that during the entire period here involved the re-

spondent refused permission to representatives of the Union not in its employ to board its vessels. The Union contended at the hearing that such refusals were discriminatory and illegally designed to prevent it from contacting its members on board. The respondent, on the other hand, offered evidence that it extended the prohibition against boarding its vessels to the representatives of any and all unions as well as to all other persons not in its employ. The respondent alleged that because of the highly inflammable nature of the cargo carried in its vessels such a policy is necessary in the proper conduct of its business. There is no evidence in the record that the respondent has discriminated against representatives of the Union by denying them access to its vessels while granting it to other persons not in its employ. It is clear that the Union was able to confer with the respondent at its offices on shore, and to contact its members employed by the respondent while they were on shore leave. Under these circumstances we find that by refusing passes to board its vessels to representatives of the Union the respondent has not interfered with, restrained, or coerced its employees in the exercise of their rights under the Act.

B. Interference, restraint, and coercion

Both J. Gordon Rosen and James P. Blasingame were hired by the respondent on or about June 30, 1937, at Port Arthur, Texas, and assigned to the

S. S. California as able-bodied seaman and quartermaster, respectively.

When Rosen went on board he reported for duty to Earl Baldwin, then acting first mate of the S. S. California. According to Rosen's account of the ensuing conversation Baldwin stated to him, "Just a minute, there is one thing I want to tell you we don't allow on this ship, and that is getting drunk, missing watches, and we don't allow any agitation with the crew on this union business." Blasingame gave a similar account of his first conversation with Baldwin. He said that when he boarded the S. S. California Baldwin warned him against three things, "drunkenness," "missing watches," and "union agitating."

Soon after Rosen and Blasingame went to work on the S. S. California, its regular first mate, one Dave Rosen, returned to the ship from a leave of absence. Earl Baldwin was shifted back to his regular position as second mate. As such, Baldwin was in charge of the 12 to 4 watch during which Blasingame, as quartermaster, steered the ship.

In the course of their duties, Blasingame and Baldwin were frequently on the bridge together and engaged in various conversations. Concerning these conversations, Blasingame testified, "He (Baldwin) told me he belonged to some union out on the west coast, and he got gypped out of about \$50, and he never did get nothing out of it, and he ain't never had any use for a union since," and that Baldwin also told him how the ship had been run without

union men aboard and how he (Baldwin) had to get rid of a man "because he was agitating union all the time." On one occasion, according to Blasingame, a newly hired seaman came aboard wearing a union button. Baldwin upon seeing it remarked, "There is a man who won't ride this ship long." At another time, Blasingame testified, Baldwin asked him if a certain new seaman was a "rank and file."⁸ Blasingame replied that he did not know and Baldwin said, "Well, if he is he won't be on this ship very long."

Blasingame also testified that Baldwin asked him about his own union affiliation as well as that of various other crew members, including J. Gordon Rosen. Blasingame avoided giving a direct answer to the question as to his own membership in the Union, he said, and stated to Baldwin that he knew nothing about the membership of others.

Baldwin testified that when J. Gordon Rosen and Blasingame first boarded the S. S. California he told them simply to go to their quarters. He denied warning them against "union agitation." Although he admitted having had, as second mate, various conversations with Blasingame, he flatly denied each and every anti-union statement attributed to him by the latter. The Trial Examiner did not credit Baldwin's denials, nor do we. We find that Bald-

⁸The Union was commonly referred to as the "rank and file" during the first stages of its organization and for some time thereafter.

win made the statements attributed to him by J. Gordon Rosen and Blasingame substantially as recited above.

As acting first mate on the S. S. California when J. Gordon Rosen and Blasingame were hired and when he warned them against "union agitation," Baldwin was second in authority only to the captain. As second mate at the time of his various conversations with Blasingame on the bridge of the S. S. California, Baldwin was the third ranking officer on the ship. During the absence of his superior officer or officers, Baldwin was in complete charge of the ship. He was at all times in charge of the deck crew during one watch of 8 hours each day. The respondent is clearly accountable for his statements of the nature discussed above.⁹

We find that the respondent, by warning its employees against organization, threatening to discharge union members, and questioning an employee about membership in the Union, has interfered with, restrained, and coerced its employees on the S. S. California in the exercise of the rights guaranteed in Section 7 of the Act.

C. The shipping articles

As stated above, the amended complaint charges the respondent with having discharged and refused

⁹See *Virginia Ferry Corporation v. N. L. R. B.*, 101 F. (2d) 103 (C. C. A. 4), enf'g *Matter of Virginia Ferry Corporation and Masters, Mates and Pilots of America*, 8 N. L. R. B. 730.

to reinstate various employees in violation of Section 8 (3) of the Act.

It is undisputed that each seaman involved in the particular alleged discharges, which are fully discussed in the sections below, signed shipping articles required by law,¹⁰ and that each received his discharge certificate¹¹ at the port from which he had originally embarked. The respondent contends that under the circumstances there is no issue of unlawful discharge involved in this proceeding, alleging that the shipping articles constituted contracts of employment under which the employment relationship was terminated as a matter of law at the end of the particular voyages concerned.

We cannot concur in this contention of the respondent. It is clear from the record that the termination of a voyage does not, as a matter of fact, terminate the employment relationship between the respondent and the members of the crew. With the exception of those seamen who either quit or are dismissed, the crew continues in the performance of its duties. Regular watches are maintained and the seamen remain subject to the orders of their ship's officers. Ordinarily the same crew goes on the succeeding voyage.

¹⁰46 U. S. C. A. 564; 46 U. S. C. A. 574.

¹¹In the event a seaman quits a particular vessel or is dismissed for any reason, the law requires that he be given a discharge certificate, 46 U. S. C. A. 643.

Despite the fact that seamen may have concurrently signed shipping articles for a voyage, the respondent may dismiss them on different days upon or after the end of the voyage, thus indicating that it is the dismissal by the respondent's officers rather than the completion of the voyage which terminates the employment relationship.¹² Furthermore, the respondent's working rules provide, "all unlicensed personnel with one year of continuous service shall be given an annual vacation of one week with pay. Those in continuous service for two years or more shall be given an annual vacation of two weeks with pay." Since shipping articles signed by the respondent's seamen are never for voyages lasting as long as a year, the above-quoted provisions of the working rules would be meaningless if, as the respondent contends, the employment relationship was ended upon the completion of each voyage.

¹²Both J. Gordon Rosen and Clarence Buckless signed their last shipping articles on the S. S. Nevada on April 13, 1938, at Port Arthur for a voyage to Port Texaco, Louisiana, to be paid off in Port Arthur, Port Neches, or Houston. Buckless was dismissed by the respondent on April 18, 1938, at Port Arthur, while Rosen was dismissed April 19, 1938, at Port Arthur. The respondent contends in substance that neither man was discharged, but that the expiration of the shipping articles automatically terminated the employment relationship on the dates given.

On the basis of all the evidence, we find that notwithstanding the termination of a particular voyage, the employment relationship of each member of the crew on the respondent's ships here involved continued until he quit or was dismissed for a lawful cause.¹³

D. The alleged discharges of J. Gordon Rosen and James P. Blasingame from the S. S. "California."

At the time of the hearing both J. Gordon Rosen and Blasingame had been seamen for about 10 years, and able-bodied seamen for 6 and 7 years, respectively. Prior to their employment on the S. S. California on June 30, 1937, J. Gordon Rosen had worked about 4 months during 1935 for the respondent on the S. S. Nevada, from which he resigned, and Blasingame had been employed on various of the respondent's vessels intermittently since 1931 for short periods totaling about 7 months. He had not been dismissed from any of these vessels because of unsatisfactory work or conduct. Between periods of employment by the respondent J. Gordon Rosen and Blasingame worked on the ships of various other companies.

Both men joined the Union at its inception in the first part of 1937. J. Gordon Rosen was an especially active member. Immediately after he was

¹³See Matter of South Atlantic Steamship Company of Delaware and National Maritime Union of America, 12 N. L. R. B. 1367.

hired on the S. S. California he began discussing the Union with various members of the crew. He distributed union literature among the unlicensed seamen and started the practice of holding regular meetings of the Union, a practice which had been neglected prior to his coming aboard. On several occasions J. Gordon Rosen was elected as the crew's delegate to present grievances to the captain and first mate. Blasingame accompanied him as a co-delegate on one or more occasions.

On September 19, 1937, when the S. S. California was in Port Arthur, J. Gordon Rosen and Blasingame left the ship. According to the Union, they were discharged because of their union activity. The respondent contends that both men quit voluntarily.

Circumstances surrounding the alleged discharge of J. Gordon Rosen will be discussed first. He testified that on the morning of September 19, 1937, the boatswain said to him, "The mate told me you are fired." J. Gordon Rosen reports that he replied, "I guess you know what I am getting fired for," and that the boatswain answered, "Yes, I feel pretty bad about it. I ought to quit myself." The boatswain did not testify.

According to J. Gordon Rosen, he then packed his things and went to see Baldwin who was making out his discharge slip. He testified that he asked, "What is the reason for my getting fired?" and that Baldwin replied, "The reason, well, you know we don't want any agitating back there."

Blasingame testified that on the same morning he was below packing to leave the ship and that he heard the boatswain and the first mate, Dave Rosen, talking outside his bunk. Blasingame testified that he heard the boatswain say, "You are firing Rosen, the only good A. B. that I got on deck," and the first mate reply, "I don't give a damn. These guys aren't going to run this ship. This ship is no union ship."

Baldwin denied that he had dismissed J. Gordon Rosen, or that he knew anything about his leaving the ship until some time after the event, when the first mate instructed him to enter on the ship's crew list that J. Gordon Rosen and Blasingame had resigned.¹⁴ He denied having made out J. Gordon Rosen's discharge certificate.

Captain P. Peterson, of the S. S. California, was in Norway at the time of the hearing. The parties stipulated that if he were present he would testify that both J. Gordon Rosen and Blasingame had voluntarily quit, and that he personally paid them off. A comparison of the handwriting on both men's discharge certificates with Captain Peterson's signature on the shipping articles indicates that Captain Peterson both made out and signed the discharge certificates.

Dave Rosen, the first mate, testified that neither he nor Captain Peterson had dismissed J. Gordon

¹⁴The crew list was not introduced in evidence.

Rosen. He said that both J. Gordon Rosen and Blasingame told him before September 19, 1937, that they were going to quit. This latter statement is confirmed by J. Gordon Rosen who testified that on September 7, 1937, he and Blasingame unsuccessfully took up a dispute concerning overtime with the first mate. Concerning the first mate's failure to satisfy his request, J. Gordon Rosen said at the hearing, "When I had this conversation with the mate I told him if that is all they could afford to give us, I said, 'I am going to quit,' and James Blasingame told him the same thing, 'I am going to quit.' "

On the basis of the entire record, we find that the evidence is insufficient to establish that the respondent discharged J. Gordon Rosen from the S. S. California because of his membership in the Union.

Blasingame testified that in the morning of September 19, 1937, the first mate said to him, "Blasingame, you are fired right now," and that when he asked for the reason the first mate replied, "Never mind, you can't ride this ship any more. Go ride one of your rank and file ships."

Dave Rosen, on the other hand, testified that when the S. S. California got into Port Arthur, Blasingame told him that he was dissatisfied with conditions on board and was going to quit. Blasingame did not deny that he had announced on September 7, 1939, as testified by J. Gordon Rosen, that he was going to quit.

The account given by O. D. Mitchell, Blasingame's "bunkmate" on the S. S. California, of events on the morning of the alleged discharges is uncontradicted by other evidence in the record. Mitchell testified that on that morning he found Blasingame in their quarters packing his belongings. Mitchell asked him what had happened. Blasingame replied, according to Mitchell, "that he was getting off; that he didn't like the ship." Blasingame did not tell Mitchell that he had been "fired."

Mitchell also testified that Blasingame was not any more active in the Union than a number of the other employees on the ship. The record is clear that there were other men active in the Union on board the S. S. California.

On the basis of the entire record we find that the evidence is insufficient to establish that the respondent discharged James P. Blasingame from the S. S. California because of his membership in the Union.

E. The discharges of Clarence Buckless and J. Gordon Rosen from the S. S. "Nevada."

—At the time of the hearing, Clarence Buckless had been a seaman for 20 years and an able-bodied seaman for 12 years. He joined the Union on June 7, 1937. Buckless was hired by the respondent on November 17, 1937, and assigned to the S. S. Nevada as an able-bodied seaman. About a week

later he was promoted to the position of ship's boatswain. During the 13 years previous to his employment on the S. S. Nevada, Buckless had been employed intermittently on various of the respondent's ships for short periods totaling 18 months.

On the S. S. Nevada Buckless very soon became active as a leader and organizer of the Union. He called meetings of the Union for the crew, most of whom were members, and was delegated to speak with the captain and first mate concerning various grievances. Buckless testified that he told Carl Tranberg, the first mate, that he had been elected delegate of the Union.

Thereafter, on January 10, 1938, J. Gordon Rosen was again hired by the respondent and assigned to the S. S. Nevada as an able-bodied seaman. Rosen testified that when he boarded the S. S. Nevada he found that the entire crew, with the exception of one man, was composed of members of the Union.

Like Buckless, Rosen at once became active in affairs of the Union. He presided over meetings held in the crew's quarters each week and, along with Buckless and one or two others, acted as a delegate to discuss various controversial grievances with the ship's officers. He drafted a letter, copies of which the crew sent through the mails and hiring halls to crews of the respondent's other ships, urging them to join the Union. It seems clear that Buckless and Rosen were outstanding as active

leaders of the Union on board the S. S. Nevada, and that the ship's officers were aware of their activity.

On April 18, 1938, at Port Arthur, Hugo Swanson, captain of the S. S. Nevada, gave Buckless his discharge slip and told him that he was dismissed for "drunkenness and bringing liquor aboard the ship." A day later, on April 19, 1938, the first mate, Carl Tranberg, dismissed Rosen. Rosen testified that he asked Tranberg why he was being "fired," and that the latter answered, "Well, it might be the reason that your work is not satisfactory."

The respondent contended that Buckless' shipping articles terminated on April 18, 1938, and that he was not reemployed because of his alleged habitual drunkenness. Three officers of the S. S. Nevada testified concerning various occasions when Buckless came on board after shore leave "under the influence" of liquor. Buckless admitted that he drank while on shore but denied that his doing so interfered with his duties on the ship. The evidence does not entirely support his denial. On the other hand, it is clear from the record that heavy drinking is not uncommon among unlicensed seamen employed by the respondent, and that they are not ordinarily discharged for that reason. Also, it is undisputed that on more than one occasion, and during the course of a voyage, Captain Swanson

himself gave Buckless liquor in substantial quantities.¹⁵

As to Rosen, the respondent contended that he was not discharged because of his activity in the Union, but that his shipping articles expired on April 19, 1938, and he was not reemployed because he was lazy and continually neglected his duties. First Mate Tranberg testified that Rosen seemed to "intentionally lag behind in his work," and that on various occasions he left his position when he was supposed to be on watch and went aft to play cards, write, or smoke. Captain Swanson testified that Rosen appeared to him to be "purely lazy" and that Tranberg had often complained about his work.

Rosen denied that he had improperly performed any of his duties. It is clear that he does not smoke. The respondent admitted that when Rosen was employed on the S. S. Nevada in 1935, and on the S. S. California from June 30 to September 19, 1937, his work had been satisfactory.¹⁶

15. This was liquor which Buckless had obtained while the S. S. Nevada was in Spain. As the liquor came on board Captain Swanson confiscated it. During the return trip to the United States Captain Swanson gave it back to Buckless a bottle at a time.

16. As is discussed below, less than a month and a half after Buckless and Rosen received their discharge papers from the S. S. Nevada they were rehired by the respondent on the S. S. Washington as quartermaster and able-bodied seaman, respectively. In its brief and at the oral argument the

We feel that the conflicting evidence concerning the respondent's real reason for discharging and refusing to reemploy Buckless and Rosen on the S. S. Nevada is resolved by the testimony of Leo Herman and George Hart.

Leo Herman was hired by the respondent as an able-bodied seaman on the S. S. Nevada at about 7 a. m. on April 19, 1938, some hours after Buckless had left the ship but before the dismissal of Rosen. Herman testified that when he came on board Rosen and others asked him about his union affiliation, and when he told them that he was a member of the

respondent urged that the fact that they were rehired demonstrates that the two men had not been discharged from the S. S. Nevada because of their activity in the Union.

We do not feel that this argument tends to resolve any of the issues. It might equally well be urged that the respondent would hardly rehire Buckless as a quartermaster with the duty of steering the S. S. Washington, as it did, if he was in truth discharged from the S. S. Nevada because of habitual drunkenness as the respondent contends, and that the respondent would not rehire Rosen if he was in fact negligent and lazy.

The fact of the situation appears from all of the evidence to be that, in so far as the hiring of unlicensed seamen is concerned, each of the respondent's ships was operated largely as a separate unit, obtaining its employees from any of various uncoordinated agencies. A man might therefore be discharged from one of the respondent's ships and thereafter rehired on another, the fact of the rehiring having little or no bearing upon the merits of, or the reasons for, the previous discharge.

International Seaman's Union, an affiliate of the American Federation of Labor, they objected to his working on the ship. Herman then went to Tranberg, the first mate, and explained that the crew did not want him on board. Tranberg told him to go to work.

Later during the same day Herman again reported to Tranberg, who asked him, according to Herman, with whom he had the conversation about his union affiliation. Herman testified that he answered that, "he wasn't a rat," and that Tranberg then said, "I know who you had the conversation with. It was Baldy.¹⁷ Baldy is a good man, but he let the union go to his head. We had a boatswain¹⁸ on here. He done the same thing. Every time a — — — (new) man comes on board he asked him if he had a union book."

Herman further testified that about 9 days later Tranberg again spoke to him. Herman's account of this conversation follows:

He told me that he fired Baldy on account of union activities, but that is not the reason he gave him, but he also fired the boatswain on account of union activities but the captain found another reason to fire him. The only reason he told me (was) that I told him I

17. The record is clear that J. Gordon Rosen was commonly called "Baldy."

18. Herman testified that he understood that this reference was to Buckless.

didn't belong to the N. M. U.; I belonged to the I. S. U. Otherwise he wouldn't have told me.

During the period here involved, George Hart was a quartermaster on the S. S. Nevada. He testified that on April 19, 1938, he was standing nearby when Herman reported to Tranberg that the rest of the crew objected to his working because he was a member of the International Seaman's Union. Hart said that after Herman left, Tranberg turned to him and asked, "Hart, how about this? What is this all about? Hart replied that all of the crew were members of the Union except Herman and that they didn't want him on board. Tranberg then said, according to Hart, "When you go back aft you tell those people I don't want none of that kind of stuff on here. I am not going to have it. I thought I got rid of that when I got rid of that fellow yesterday." Hart said he understood that Tranberg was referring to Buckless when he said "that fellow," since only one other man, an ordinary seaman, had been discharged the previous day and he was not active in the Union.

Tranberg testified that he probably spoke to Herman when he came on board, but that he did not recall the conversation. He denied making the statements attributed to him by Herman but said nothing concerning the alleged conversation with Hart.

On the entire record, we credit the testimony of Herman and Hart. We find that the respondent discharged Clarence Buckless and J. Gordon Rosen from the S. S. Nevada, and refused to reemploy them on that ship because they had joined and actively assisted the Union.

F. The discharge of J. Gordon Rosen from the S. S. "Washington."

J. Gordon Rosen was unemployed from the time he left the S. S. Nevada until June 1, 1938, when he was rehired by the respondent for work as an able-bodied seaman on the S. S. Washington. As in the case of his previous employment with the respondent, soon after his arrival on the ship Rosen became very active in the affairs of the Union. He presided over meetings and was elected as a delegate. In that capacity from time to time he presented various grievances of the crew to Captain Bergman of the S. S. Washington. Although the captain refused to recognize Rosen as a delegate of the Union, most of the grievances were satisfactorily adjusted. As delegate, Rosen also discussed various controversial issues with C. L. Hand, the respondent's port captain at Port Arthur. On July 11, 1938, he drafted and signed an open letter from the crew of the S. S. Washington to the crews of all other ships owned by the respondent, urging them to organize and severely criticizing the respondent because it allegedly refused to improve the working conditions of its employees. This letter

was distributed widely through the mails and by personal contacts on shore. Rosen also sent a telegram to J. P. Roney, the general marine manager of the respondent's marine department, complaining that the captain of the S. S. Washington refused to recognize the delegates of the Union. It is clear that the officers of the S. S. Washington had knowledge of Rosen's activity on behalf of the Union.

On July 14, 1938, at Port Arthur, the first mate, C. B. Johannessen, told Rosen that he was "fired" because of "unsatisfactory seamanship." This occurred a few hours after Rosen, as delegate of the Union, had taken up an overtime dispute with C. L. Hand, the port captain.

The respondent contends that Rosen was not discharged because of his activity on behalf of the Union, but because he continually neglected his work. Both Bergman and Johannessen testified that on various occasions Rosen was noticeably negligent and lazy. The respondent also introduced in evidence the crew list of the S. S. Washington for July 16, 1938, showing a notation that on July 14, 1938, Rosen was "discharged for incompetency."

In view of Rosen's long experience as a seaman we do not credit the notation on the crew list that he was incompetent. Nor do we fully credit the testimony that Rosen was negligent and lazy in the performance of his duties. There is considerable evidence to the contrary. On the basis of the entire

record it seems apparent, and we find, that the respondent discharged Rosen from the S. S. Washington on July 14, 1938, and refused to reinstate him because he had joined and actively assisted the Union. Rosen desires reinstatement.

On the basis of the entire record we find that by discharging J. Gordon Rosen and Clarence Buckless from the S. S. Nevada, and by discharging J. Gordon Rosen from the S. S. Washington, the respondent has discriminated against them in regard to their hire and tenure of employment, thereby discouraging membership in the Union, and has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

We further find that by refusing to reemploy Clarence Buckless on the S. S. Nevada after April 18, 1938, and by refusing to reemploy J. Gordon Rosen on the S. S. Nevada after April 19, 1938, and on the S. S. Washington after July 14, 1938, the respondent discriminated against the two men in regard to their hire and tenure of employment, thereby discouraging membership in the Union,¹⁹ and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

G. The discharge of Clarence Buckless from the S. S. "Washington."

Clarence Buckless was unemployed from the time

19. See footnote 13, *supra*.

he left the S. S. Nevada on April 18, 1938, until June 1, 1938, when he was hired by the respondent as a quartermaster on the S. S. Washington. While on the S. S. Washington, Buckless continued to be an active member of the Union, but it does not appear from the record that he was outstanding in this respect.

On July 14, 1938, at Port Arthur the first mate, C. B. Johannesen, told Buckless that he was "fired" for "missing a watch at Claymont, Delaware" and for being an unsatisfactory seaman.

The respondent contends that Buckless was not discharged because of his activity in the Union, but was refused reemployment because of his alleged habitual drunkenness and poor helmsmanship. The evidence that Buckless did considerable drinking and that it interfered with the proper performance of his duties on the S. S. Washington is convincing.

On the basis of all the evidence we find that the respondent did not discharge Buckless from the S. S. Washington, or refuse to reinstate him because of his activity in the Union.

H. The discharges of Albert P. Lortie, F. W. Zinkiewicz, and Rufus H. Andrews.

Albert P. Lortie had been a seaman for over 20 years at the time of the hearing. He was hired by the respondent for the first time on May 11, 1938, and assigned to the S. S. Roanoke as an able-

bodied seaman.

Soon after boarding the S. S. Roanoke, Lortie became active on behalf of the Union. He insisted that regular meetings of the members of the Union be held. These had been neglected prior to his coming on board. He presided at the meetings and saw that copies of the minutes, signed by himself as chairman, were posted on the bulkhead in the petty-officers' messroom. Lortie openly solicited non-union members of the crew to join the Union. There is no substantial showing in the record, however, that during Lortie's employment on the S. S. Roanoke, the respondent interfered with or discouraged in any way his activities of the nature described above.

On July 30, 1938, at Port Arthur, according to Lortie, the first mate, Edgar Carpenter, discharged him saying that he was a good seaman but that he had been "drunk and disorderly" and "threatening men back there to join the union." The respondent introduced uncontroverted evidence that in Charleston, South Carolina, just before the S. S. Roanoke returned to Port Arthur, Lortie had come on board in a drunken condition and had threatened a mess-boy, not a member of the Union, with physical violence unless he got off the ship. A fight was averted by the intervention of the first mate. There is other evidence in the record that on various occasions Lortie came aboard drunk and unable to perform his duties. Lortie admitted that he drank but denied

that it interfered with his work. A notation from the log book of the S. S. Roanoke stating, “. . . A. Lortie discharged for being intoxicated and disorderly on board ship in Charleston, July 24,” was read into evidence.

On the basis of all the evidence we find that the respondent did not discharge Lortie from the S. S. Roanoke, or refuse to reinstate him because of his activity in the Union.

As to F. W. Zinkiewicz and Rufus H. Andrews, the complaint, as amended, alleges that the respondent engaged in unfair labor practices, within the meaning of Section 8 (1) and (3) of the Act, by discharging Andrews on July 8, 1938, from the S. S. Australia, and Zinkiewicz on July 14, 1938, from the S. S. Washington, and by refusing to reinstate them. The Trial Examiner in his Intermediate Report found that the two men were not discharged and refused reinstatement because of their union activities, but for good cause. In his Intermediate Report the Trial Examiner also granted the respondent's motion to dismiss that portion of the amended complaint in so far as it concerns Zinkiewicz and Andrews. The Union has filed no exception to the findings or rulings on the motion. We have examined the evidence and we agree with the Trial Examiner in his findings and rulings as to Zinkiewicz and Andrews.

We find that the evidence does not sustain the allegation that the respondent discharged and re-

fused to reinstate Zinkiewycz and Andrews for the reason that they had joined and assisted the Union.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the respondent set forth in Section III B, E, and F above, occurring in connection with its operations described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and to the free flow of commerce.

THE REMEDY

We have found that the respondent, by its anti-union statements and in other ways, interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act. We shall order the respondent to cease and desist from such practices.

We have found that the respondent discriminatorily discharged Clarence Buckless from the S. S. Nevada on April 18, 1938. We shall therefore order the respondent to make Buckless whole for any loss of pay he may have suffered by reason of his discharge, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from the date of the discrimination on April 18, 1938, to June 1, 1938, the date on which he was reinstated by the respond-

ent on the S. S. Washington, less his net earnings²⁰ during such period. Since we have found that Buckless' subsequent discharge from the S. S. Washington was not discriminatory, we shall not order the respondent to offer him reinstatement.

We have found that the respondent discriminatorily discharged J. Gordon Rosen from the S. S. Nevada on April 19, 1938, and from the S. S. Washington on July 14, 1938. We shall therefore order the respondent to offer Rosen immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or

²⁰By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See *Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects are not considered as earnings, but as provided below in the Order, shall be deducted from the sum due the employee, and the amount thereof shall be paid over to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects. By "earnings" in this case is meant monetary compensation obtained at other employment and also the reasonable value of board and maintenance received in addition to such monetary compensation.

other rights and privileges. We shall further order the respondent to make Rosen whole for any loss of pay suffered by him by reason of his discharges by payment to him of a sum equal to the amount which he normally would have earned as wages from April 19, 1938, to date of his discharge from the S. S. Nevada, to June 1, 1939, when he was re-hired on the S. S. Washington, and from July 14, 1938, the date of his discharge from the S. S. Washington, to the date of the offer of reinstatement, less his net earnings²¹ during such periods.

Since both J. Gordon Rosen and Clarence Buckless, while in the employ of the respondent, received in addition to their monetary wage, maintenance on shipboard, we shall order that the reasonable value of such maintenance on shipboard during the period for which we shall award back pay shall be included in the total monetary compensation to be paid to each by the respondent.

The respondent contended in its brief and at the oral argument that the Board has no power to order reinstatement or back pay for any of the seamen involved in this proceedings on the alleged grounds that they have ceased to be employees of the respondent by reason of having since obtained regular and substantially equivalent employment elsewhere. This contention is without merit. The record shows that both Clarence Buckless and J. Gordon Rosen were unemployed from the dates upon

²¹See footnote 20, *supra*.

which they were discriminatorily discharged from the S. S. Nevada until the respondent rehired them on the S. S. Washington. Clearly then, during such periods neither man had substantially equivalent employment and neither lost his employee status. After J. Gordon Rosen was discriminatorily discharged from the S. S. Washington on July 14, 1938, he was unemployed until the last part of September 1938, when he obtained work on a ship bound for Europe. The details of this employment do not appear in the record. Thus, it is not shown that J. Gordon Rosen has obtained regular and substantially equivalent employment. Even if it be assumed, as the respondent contends, that he obtained such employment, we do not believe that he thereby became remediless, either for the purposes of back pay or for purposes of future employment by the respondent.²²

We have found that the respondent did not discharge or refuse to reinstate J. Gordon Rosen and James P. Blasingame on the S. S. California, F. W. Zinkiewicz and Clarence Buckless on the S. S. Washington, A. P. Lortie on the S. S. Roanoke, or Rufus H. Andrews on the S. S. Australia because of their activities in the Union. We shall, therefore, order that the amended complaint, in so far as it alleges that the respondent discriminated in regard

²²See Matter of Eagle-Picher Mining & Smelting Company and International Union of Mine, Mill & Smelter Workers, Locals Nos. 15, 17, 107, 108, and 111, 16 N. L. R. B., No. 78.

to the hire or tenure of employment of the above-named employees on the above-named ships, be dismissed.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. National Maritime Union of America, Port Arthur Branch, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of J. Gordon Rosen and Clarence Buckless, thereby discouraging membership in the National Maritime Union of America, Port Arthur Branch, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

5. The respondent did not discharge or refuse to reinstate J. Gordon Rosen and James P. Blasingame on the S. S. California, F. W. Zinkiewicz and Clarence Buckless on the S. S. Washington, A. P. Lortie on the S. S. Roanoke, or Rufus H. Andrews on the S. S. Australia, in violation of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Texas Company, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in National Maritime Union of America, Port Arthur Branch, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any terms or conditions of their employment, because of membership or activity in connection with any such labor organization;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist National Maritime Union of America, Port Arthur Branch, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act.

(a) Make whole Clarence Buckless for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages—including therein the reasonable value of his maintenance on shipboard—from April 18, 1938, the date of such discrimination, to June 1, 1938, the date upon which he was reinstated by the respondent, less his net earnings during such period; deducting, however, from the amount otherwise due to him monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other governments which supplied the funds for said work-relief projects;

(b) Offer to J. Gorden Rosen immediate and full reinstatement to his former position held on July 14, 1938, or to a substantially equivalent position without prejudice to his seniority and other rights and privileges previously enjoyed by him;

(c) Make whole J. Gorden Rosen for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages—including therein the

reasonable value of his maintenance on shipboard—from April 19, 1938, the date he was discriminatorily discharged from and refused reinstatement on the S. S. Nevada, to June 1, 1938, when the respondent rehired him on the S. S. Washington, and from July 14, 1938, the date he was discriminatorily discharged from and refused reinstatement on the S. S. Washington, to the date of the offer of reinstatement, less his net earnings during such periods; deducting, however, from the amount otherwise due to him monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other governments which supplied the funds for said work-relief projects;

(d) Immediately post notices to its employees in conspicuous places on its docks and on its vessels, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating that the respondent will cease and desist in the manner set forth in paragraphs 1 (a) and (b) of this Order; that it will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of this Order; and that its employees are free to become or remain members of the National Maritime Union of America, Port Arthur Branch, and that it will not discriminate against any employee because of membership or activity in that organization;

(e) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith.

And it is further ordered that the amended complaint, in so far as it alleges that the respondent has discriminated in regard to the hire and tenure of employment or terms or conditions of employment of J. Gordon Rosen and James Blasingame on the S. S. California, F. W. Zinkiewicz and Clarence Buckless on the S. S. Washington, A. P. Lortie on the S. S. Roanoke, and Rufus H. Andrews on the S. S. Australia, within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed.

[Title of Board and Cause.]

MOTION OF RESPONDENT, THE TEXAS COMPANY, TO REOPEN THE RECORD AND FOR LEAVE TO INTRODUCE FURTHER AND NEWLY DISCOVERED EVIDENCE.

The undersigned, as attorney for the respondent in the above-entitled proceeding, hereby moves pursuant to Section 37 of Article II of the Rules and Regulations of the National Labor Relations Board, for a reopening of the record in this proceeding and for leave to introduce further, additional and

newly discovered evidence therein, on the following grounds:

First: In the Board's decision and order, dated January 24, 1940, is included the following statement:

"After J. Gordon Rosen was discriminatorily discharged from the S.S. Washington on July 14, 1938, he was unemployed until the last part of September, 1938, when he obtained work on a ship bound for Europe. The details of this employment do not appear in the record. Thus, it is not shown that J. Gordon Rosen has obtained regular and substantially equivalent employment."

Second: The said decision and order of the Board directs and requires the respondent to reinstate said J. Gordon Rosen and, in addition, to pay to said Rosen back pay from April 19, 1938, the date of his alleged discharge from the S.S. "Nevada", to June 1, 1938, when he was rehired on the S.S. "Washington", and from July 14, 1938, the date of his alleged discharge from the S.S. "Washington", to the date of his reinstatement by respondent.

Third: During the course of the adjourned hearing held before the Trial Examiner in Port Arthur on November 28, 1938, the attorneys for the Board and the Union conceded that said J. Gordon Rosen had been employed on a vessel of Lykes Bros. for a period of five weeks prior to November 28, 1938,

and that he was at that time en route to Europe (See Transcript of Proceedings, pp. 1965, 1966). Upon the basis of that admission the respondent moved to dismiss the complaint filed by the Board on the ground, among others, that said Rosen had obtained other regular and substantially equivalent employment elsewhere but such motion was denied.

Fourth: As appears from the record, said J. Gordon Rosen was at sea at the time of the adjourned hearing and respondent was ignorant of his whereabouts until informed by the attorneys for the Board and Union (See Transcript of Proceedings, pp. 1965, 1966). Accordingly, it was not possible for respondent to present any evidence at that time to substantiate respondent's contention that said Rosen had obtained other regular and substantially equivalent employment elsewhere.

Fifth: Since the conclusion of said hearing on November 29, 1938, respondent has continued to seek evidence upon this question and has now discovered evidence to the effect that said Rosen was employed on vessels of Lykes Bros. Steamship Co., Inc. and Lykes-Coastwise Line, Inc., as follows: on the S.S. "Meanticut" from October 10, 1938, until April 3, 1939, when that vessel was laid up, and on the S. S. "Labette" from August 19, 1939, until October 6, 1939, at which time he voluntarily quit said vessel.

Sixth: The evidence hereinabove referred to is material and will change the result in this proceeding since it establishes that said J. Gordon Rosen

had obtained other regular and substantially equivalent employment following his last alleged discharge by respondent, which fact affects any right said Rosen might have to reinstatement or to back pay or both.

Although respondent has contended and still contends that the finding of the Trial Examiner and the Board that said J. Gordon Rosen was unlawfully discharged from the S.S. "Nevada" on April 19, 1938, and from the S.S. "Washington" on July 14, 1938, is not supported by substantial evidence, nevertheless, even if it be assumed that said discharges were unlawful, since respondent has discovered and is now in possession of evidence as above set forth, which establishes that said J. Gordon Rosen did obtain other regular and substantially equivalent employment following his last alleged discharge by respondent, and since said evidence is newly discovered and could not have been discovered during the course of the hearing herein, respondent believes that the record herein should be reopened and respondent given leave to introduce further and additional evidence and testimony as to the matters herein referred to.

In support of this motion, the undersigned attaches hereto and makes a part hereof the following affidavits:

1. Affidavit of Albert E. Van Dusen, sworn to the 7th day of March, 1940.

2. Affidavit of T. E. Buchanan, General Manager of the Marine Department of re-

spondent, The Texas Company, sworn to the 7th day of March, 1940.

3. Affidavit of A. E. Jimison, Local Manager, Marine Department, Lykes Bros. Steamship Co., Inc., New Orleans, Louisiana, sworn to the 6th day of March, 1940.

Wherefore, respondent respectfully prays that the Board reopen the record herein for further proceedings in accordance with the foregoing.

Dated: New York, N. Y., March 7th, 1940.

ALBERT E. VAN DUSEN,
Attorney for Respondent,
The Texas Company,
135 East 42nd Street,
New York, N. Y.

[Title of Board and Cause.]

AFFIDAVIT OF ALBERT E. VAN DUSEN

State of New York,
County of New York—ss.

Albert E. Van Dusen, being duly sworn, deposes and says:

I am attorney for The Texas Company, respondent in the above-entitled proceeding, having offices at 135 East 42nd Street, New York City, and in such capacity appeared at the hearings before the Trial Examiner in that proceeding and am, therefore, fully acquainted with the evidence adduced at

such hearings and all the proceedings heretofore had herein.

At the hearings before the Trial Examiner on November 28, 1938, the attorneys for the Board and the Union conceded that J. Gordon Rosen, one of the persons whom the Board found to have been unlawfully discharged by the respondent, had been employed on a vessel of Lykes Brothers for a period of five weeks and was at the time of the hearing en route to Europe.

This concession appears in the transcript of the proceedings as follows:

“Mr. Pipkin: To preface a further motion I want to make here, I would like to ask Mr. Martin, Mr. Mandell and Mr. Ames where Mr. J. Gordon Rosen is now.

“Mr. Martin: He is on a boat which the last I heard of was in Europe.

“Trial Examiner Persons: What line is he on?

“Mr. Mandell: Lykes Bros.

“Trial Examiner Persons: Do you know how long he has been on there?

“Mr. Ames: Approximately five weeks.”
(Record pp. 1965, 1966)

Your deponent, as well as officials of the respondent, were ignorant of the whereabouts of said J. Gordon Rosen until informed thereof as above indicated by the attorneys for the Board and the Union, and it was, therefore, not possible to present any

evidence at the time of the hearing to substantiate respondent's contention that said Rosen had obtained other regular and substantially equivalent employment.

Since the conclusion of said hearing on November 29, 1938, respondent has continued to seek evidence upon this question and has now discovered evidence as set forth in the attached affidavit of E. A. Jimison to the effect that said J. Gordon Rosen had, in fact, obtained other regular and substantially equivalent employment.

In view of the foregoing and the facts disclosed in the affidavits attached hereto, deponent has advised his client that there exists sufficient justification for a reopening of the record in this proceeding, and that the motion herein made is meritorious.

ALBERT E. VAN DUSEN

Sworn to before me this 7th day of March, 1940.

(Seal)

T. HARRY NORRIS,

Notary Public, Kings County No. 156. New York
County Clerk's No. 185.

Commission expires March 30, 1941.

[Title of Board and Cause.]

AFFIDAVIT OF T. E. BUCHANAN

State of New York,
County of New York—ss.

T. E. Buchanan, being duly sworn, deposes and says:

I am General Manager of the Marine Department of The Texas Company, respondent herein, having an office at 135 East 42nd Street, New York City.

Shortly after the conclusion of the hearings before the Trial Examiner in the above-entitled case, I was advised by Mr. Albert E. Van Dusen, counsel for the respondent, that it had been brought out at such hearings that J. Gordon Rosen had been employed on a vessel of Lykes Brothers for a period of five weeks prior to November 28, 1938, on which date he was en route to Europe, and I was requested by Mr. Van Dusen to endeavor to ascertain the facts as to the employment of said J. Gordon Rosen.

Pursuant to such request, I communicated with Mr. E. A. Jimison, Local Manager, Marine Department of Lykes Bros. Steamship Co., Inc., New Orleans, Louisiana, and received from Mr. E. A. Jimison the information which is now incorporated in the attached affidavit of Mr. Jimison, sworn to the 6th day of March, 1940.

T. E. BUCHANAN

Sworn to before me this 7th day of March, 1940.

(Seal) T. HARRY NORRIS,

Notary Public, Kings County No. 156. New York
County Clerk's No. 185.

Commission expires March 30, 1941.

AFFIDAVIT OF E. A. JIMISON

State of Louisiana,
Parish of Orleans—ss.

E. A. Jimison, being duly sworn, deposes and says:

(1) I am Local Manager of the Marine Department of Lykes Bros. Steamship Co., Inc. and of Lykes-Coastwise Line, Inc., a subsidiary of such corporation, having offices in the Whitney Bank Building at New Orleans, Louisiana.

(2) In the capacity of Local Manager I have supervision and charge over the personnel and employment records of the corporations just referred to.

(3) An examination of the records of Lykes Bros. Steamship Co., Inc. and Lykes-Coastwise Line, Inc., discloses that J. Gordon Rosen was employed by such companies as an able bodied seaman as follows:

1. On the vessel S/S "Meanticut" continuously from October 10, 1938, to April 3, 1939, at which time he left such vessel along with other seamen due to the fact that it was laid up indefinitely.

2. On the vessel S/S Labette continuously from August 9, 1939 to October 6, 1939, at which time he voluntarily quit said vessel.

3. That while employed as an able bodied seaman on the vessels just referred to Mr. Rosen was paid wages in the sum of \$72.50

per month, plus overtime at the rate of 70¢ per hour.

4. That in connection with his employment on the vessels just referred to Mr. Rosen signed the customary shipping articles, either foreign or coastwise, and was employed on a permanent basis as were all other seamen who were employed for service on such vessels provided their services and conduct were satisfactory.

5. That it was customary prior to and upon completion of each voyage and at time of signing articles and signing off articles for Mr. Rosen as well as other members of the crew of the vessels referred to to be given the usual medical examination incidental to their employment.

Signed: E. A. JIMISON

Sworn to before me this 6th day of March, 1940.

(Seal)

Signed: F. S. COUVILLON,

Notary Public.

[Title of Board and Cause.]

ORDER DENYING MOTION TO REOPEN
THE RECORD AND FOR LEAVE TO
INTRODUCE FURTHER AND NEWLY
DISCOVERED EVIDENCE

A charge and amended charges, pursuant to Section 10(b) of the Act, having been filed in the above-

entitled case, a complaint thereon having been issued, hearings having been duly held before Howard Myers and before Charles E. Persons, Trial Examiners duly designated, the Intermediate Report of the said Howard Myers having been issued and served upon the parties, Exceptions thereto and a brief in support thereof having been filed by the respondent, oral argument on the said Exceptions having been heard before the Board at Washington, D. C., the Board, on January 24, 1940, having issued a Decision and Order in which it ordered in substance, among other things, that the respondent, The Texas Company, offer to J. Gordon Rosen immediate and full reinstatement to his former position held on July 14, 1938, or to a substantially equivalent position without prejudice to his seniority and other rights and privileges previously enjoyed by him, and that the respondent make whole J. Gordon Rosen for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment; and the respondent, prior to the issuance of said Decision having contended that the Board was without power to order reinstatement or back pay for the said J. Gordon Rosen because he had obtained regular and substantial employment subsequent to his discharge and therefore ceased to be an employee; and the Board having stated in its Decision and Order that it was not shown that J. Gordon Rosen had obtained regular and sub-

stantially equivalent employment, and that such fact, even if assumed, did not prevent the Board from requiring respondent to reinstate the said J. Gordon Rosen and to pay him back wages; and the respondent, on March 11, 1940, having filed its Motion To Reopen Record And For Leave To Introduce Further And Newly Discovered Evidence in which it alleged in substance, among other things, that it has recently discovered new evidence that the said J. Gordon Rosen obtained regular and substantially equivalent employment following his last discharge by the respondent and that the record should be reopened for the introduction of such evidence; and the respondent having filed with the aforesaid Motion affidavits purporting to show that J. Gordon Rosen was employed as an able-bodied seaman at the rate of \$72.50 per month plus overtime at the rate of 70 cents per hour by Lykes Bros. Steamship Co., Inc. and Lykes-Coastwise Line, Inc., on the S. S. Meanticut from October 10, 1938, to April 3, 1939, at which time he left the said vessel along with other seamen due to the fact that it was laid up indefinitely, and on the S. S. Labette from August 9, 1939, to October 6, 1939, at which time he voluntarily resigned; and the Board having duly considered the said Motion and the affidavits accompanying it, and having been advised in the premises, and being of the opinion (1) that the respondent is not entitled to introduce evidence concerning the employment of said J. Gordon Rosen subsequent to the hearing in this proceeding; (2) that the re-

spondent's Motion is not timely; and (3) that the matters set forth in the respondent's Motion, if assumed to be true, do not show that the said J. Gordon Rosen has secured regular and substantially equivalent employment;

It Is Hereby Ordered, for each of the foregoing reasons, that the said Motion To Reopen The Record And For Leave To Introduce Further and Newly Discovered Evidence be, and it hereby is, denied.

Dated, Washington, D. C., March 22, 1940.

By direction of the Board:

(Seal)

BEATRICE M. STERN,

Acting Secretary.

In the United Circuit Court of Appeals for the
Ninth Circuit

No. 9518

THE TEXAS COMPANY,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR REVIEW.

To the Honorable, The Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Your petitioner, The Texas Company, respectfully shows and alleges:

I. That your petitioner is, and at all times hereinafter mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and qualified to do business as a foreign corporation in the States of Montana, Idaho and Arizona; and that it is now and at all times hereinafter mentioned has been transacting business in the said States of Montana, Idaho and Arizona, and within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit.

II. That heretofore and on or about September 3, 1938, upon charges filed by the National Maritime Union of America, Port Arthur Branch, (hereinafter called the "Union"), the respondent, National Labor Relations Board (hereinafter sometimes referred to as the "Board"), issued a complaint against your petitioner alleging that your petitioner had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act (hereinafter sometimes referred to as the "Act"), 49 Stat. 449, in that your petitioner had (1) discharged and refused to reinstate certain seamen, (2) through its officers, agents and employees, made various statements to its employees discouraging affiliation in or activity on behalf of the Union, and (3) denied passes to representatives of the Union to board petitioner's vessels to contact members of the Union, all in violation of said Act.

III. That on or about September 12, 1938, your petitioner duly served and filed its answer and amended answer to said complaint in which your petitioner denied that it had engaged in or was engaging in any unfair labor practices or had violated the Act as alleged in said complaint.

IV. That issue having been joined in the said proceeding between the Board and your petitioner, a hearing was held at Port Arthur, Texas, from September 12 to 16 and from September 19 to 22, 1938, before Howard Myers, a Trial Examiner duly designated by the Board, and a further hearing was held also at Port Arthur, Texas, on November 28 and 29, 1938, before Charles E. Persons, another Trial Examiner duly designated by the Board.

V. That at the opening and close of the Board's case and at the close of the entire case, your petitioner duly moved to dismiss the Board's complaint and all proceedings thereunder on the ground that no cause of action was alleged or proved, but said motions were denied by the Trial Examiner.

VI. That during the course of the said hearing your petitioner duly objected to certain evidence offered on behalf of the Board and the Union and duly moved to strike out certain other evidence admitted over petitioner's objections, but the Board's Trial Examiner overruled said objections and denied such motions.

VII. That on or about May 8, 1939, Trial Examiner Myers filed his Intermediate Report, in which he found and concluded that petitioner had

engaged in unfair labor practices and in which he recommended that petitioner take certain affirmative action to remedy the situation brought about by such unfair labor practices, including reinstatement with back pay of four seamen.

VIII. That thereafter, to-wit, on or about June 13, 1939, pursuant to the rules and regulations of the Board, your petitioner duly made, served and filed with the Board its exceptions to the Trial Examiner's Intermediate Report.

IX. That thereafter, to-wit, on October 24, 1939, oral argument of counsel was had before the Board upon the issues of fact and of law in said proceedings, in which argument counsel for your petitioner prayed that said complaint and the proceedings thereunder be dismissed upon the grounds set forth in petitioner's various motions to dismiss and in petitioner's exceptions to the Trial Examiner's Intermediate Report and upon the further ground that neither the acts of your petitioner alleged in said complaint or the acts of your petitioner as shown in the testimony or other evidence at the hearing constituted any violation of the National Labor Relations Act, 49 Stat. 449, or of any other law or statute, the enforcement of which is entrusted to the Board.

X. That thereafter, to-wit, on or about January 24, 1940, the said Board did make and file its decision and final order in the said proceedings, which decision and order were served on your petitioner

by mail on January 24, 1940, and by which your petitioner was ordered to:

“1. Cease and desist from:

(a) Discouraging membership in National Maritime Union of America, Port Arthur Branch or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any terms or conditions of their employment, because of membership or activity in connection with any such labor organizations;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist National Maritime Union of America, Port Arthur Branch, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Make whole Clarence Buckless for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his

hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages—including therein the reasonable value of his maintenance on shipboard—from April 18, 1938, the date of such discrimination, to June 1, 1938, the date upon which he was reinstated by the respondent, less his net earnings during such period; deducting, however, from the amount otherwise due to him monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other governments which supplied the funds for said work-relief projects;

(b) Offer to J. Gordon Rosen immediate and full reinstatement to his former position held on July 14, 1938, or to a substantially equivalent position without prejudice to his seniority and other rights and privileges previously enjoyed by him;

(c) Make whole J. Gordon Rosen for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages—including therein the reasonable value of his

maintenance on shipboard—from April 19, 1938, the date he was discriminatorily discharged from and refused reinstatement on the S. S. Nevada, to June 1, 1938, when the respondent rehired him on the S. S. Washington, and from July 14, 1938, the date he was discriminatorily discharged from and refused reinstatement on the S. S. Washington, to the date of the offer of reinstatement, less his net earnings during such periods; deducting, however, from the amount otherwise due to him monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other governments which supplied the funds for said work-relief projects;

(d) Immediately post notices to its employees in conspicuous places on its docks and on its vessels, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating that the respondent will cease and desist in the manner set forth in paragraphs 1 (a) and (b) of this Order; that it will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of this Order; and that its employees are free to become or remain members of the National

Maritime Union of America, Port Arthur Branch, and that it will not discriminate against any employee because of membership or activity in that organization;

(e) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith."

XI. That subsequent to the date of said decision and order, to-wit, on or about March 11, 1940, your petitioner filed with the Board a motion to reopen the record and for leave to introduce further and newly discovered evidence to establish that J. Gordon Rosen, one of the discharged employees whom petitioner was required by the Board's decision and order to reinstate, had obtained regular and substantially equivalent employment elsewhere, which motion was, by order dated March 22, 1940, denied by the Board.

XII. That the Board's aforesaid decision and orders are erroneous in fact, unauthorized and insufficient in law, and ought to be reviewed and set aside by this Court for the following reasons:

(1) The said decision and orders, and the findings of fact and conclusions of law of the Board upon which the said decision and orders are based, are not in accordance with law, are contrary to the evidence, are without evidence to support them, are not supported or warranted by substantial or credible evidence and

reflect bias and prejudice on the part of the Board's Trial Examiners;

(2) The Board, through its Trial Examiners, erred in admitting and considering incompetent, immaterial and irrelevant testimony prejudicial to petitioner, as is more fully and specifically set forth in petitioner's exceptions to the Intermediate Report filed by Trial Examiner Myers;

(3) The acts of petitioner as shown by the testimony do not constitute a violation of the National Labor Relations Act;

(4) The Board erred in finding and concluding that your petitioner, by anti-union statements and in other ways, interfered with, restrained and coerced its employees in the exercise of rights guaranteed by Section 7 of the Act and thereby engaged in unfair labor practices within the meaning of Section 8(1) of the Act;

(5) The Board erred in finding and concluding that your petitioner warned its employees against organization, threatened to discharge Union members and questioned an employee about membership in the Union and thereby interfered with, restrained and coerced its employees on its vessel, the S. S. California, in the exercise of the rights guaranteed by Section 7 of the said Act;

(6) The Board erred in finding and concluding that your petitioner discharged Clar-

ence Buckless and J. Gordon Rosen from the S. S. Nevada because of Union activities;

(7) The Board erred in finding and concluding that your petitioner discharged J. Gordon Rosen from the S. S. Washington because of Union activities;

(8) The Board erred in awarding back pay to Clarence Buckless for the period from April 18, 1938 to June 1, 1938, since the Board did not direct reinstatement of said Clarence Buckless;

(9) The Board erred in directing reinstatement of J. Gordon Rosen since he had obtained regular and substantially equivalent employment elsewhere;

(10) The Board erred in awarding back pay to J. Gordon Rosen since he had obtained regular and substantially equivalent employment elsewhere;

(11) The Board erred in directing petitioner to cease and desist and to take affirmative action as specified in the Board's aforesaid decision and orders and to post notices to such effect;

(12) The Board erred in denying petitioner's motion to reopen the record and for leave to introduce further and newly discovered evidence to establish that J. Gordon Rosen had obtained regular and substantially equivalent employment elsewhere.

Wherefore, your petitioner prays this Honorable Court to review and set aside the decision and orders of the National Labor Relations Board herein referred to and to grant petitioner such other and further relief as to the Court may seem just and proper.

Dated: May 3, 1940.

THE TEXAS COMPANY

By HARRY T. KLEIN

Vice President

ALBERT E. VAN DUSEN,

135 East 42nd Street,

New York City, N. Y.,

J. A. McNAIR,

929 So. Broadway,

Los Angeles, California,

JAMES H. PIPKIN,

P. O. Box 2332,

Houston, Texas,

Attorneys for Petitioner,

The Texas Company.

State of New York,

County of New York—ss.

Harry T. Klein, being duly sworn, deposes and says: That he is an officer, to wit, Vice President, of The Texas Company, the petitioner named in the foregoing petition; that he has read the foregoing petition by him subscribed as such officer and knows the contents thereof; that the same is true to the

knowledge of deponent except as to the matters therein related to be alleged on information and belief, and that as to those matters he believes it to be true.

HARRY T. KLEIN

Subscribed and sworn to before me this 3rd day of May, 1940.

(Seal)

S. B. GIFFORD,

Notary Public Kings County. Clerk's No. 412, Register's No. 1016. N. Y. Co. Clerk's No. 25, Reg. No. 1G22.

My Commission Expires March 30, 1941.

[Endorsed]: Mailed May 7, 1940. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

PETITION IN INTERVENTION

To the Honorable, the Justices of the United States
Circuit Court of Appeals for the Ninth Circuit:

Now comes the National Maritime Union of America, by its attorney, William L. Standard, Esq., and respectfully petitions this Honorable Court for leave to intervene and be made a party to the above-entitled suit, for all purposes, for leave to file its brief, and for leave to argue orally on the appeal herein, and respectfully alleges the following:

First: That the National Maritime Union of America is an unincorporated labor association, having its principal office and place of business in the City and State of New York.

Second: That the proceedings sought to be reviewed herein by The Texas Company, were initiated by the National Labor Relations Board, on charges duly filed on behalf of the aforesaid National Maritime Union of America.

Third: That thereafter hearings were conducted by the National Labor Relations Board, at which hearings The Texas Company was the respondent, and the National Maritime Union of America was the Complainant, and that the said National Maritime Union of America, by counsel, actively participated in the said hearings.

Fourth: That thereafter The Texas Company, aforesaid, sought to reverse the intermediate report and the recommendations made by the Trial Examiner, and the case was argued before the National Labor Relations Board at Washington, and that the aforesaid William L. Standard, by Max Lustig, of counsel, argued the case at this hearing.

Fifth: That thereafter the National Labor Relations Board issued an order directing The Texas Company, among other things, to cease discouraging membership in the National Maritime Union of America, to cease discriminating against the members of the said Union, and to reinstate certain members of the said Union.

Sixth: That The Texas Company seeks in this suit to reverse and set aside the aforementioned order issued by the National Labor Relations Board.

Seventh: That while the nominal parties to this proceeding are the National Labor Relations Board and The Texas Company, which filed a petition for review, the National Maritime Union of America has a legal and equitable interest in the proceeding and in the outcome thereof.

Eighth: That the dispute herein to be determined really exists between the National Maritime Union of America and The Texas Company.

Wherefore, the National Maritime Union of America respectfully petitions this Honorable Court for leave to intervene and be made a party to the suit for all purposes, for leave to file its brief and for leave to argue orally before this Court.

Dated: New York, N. Y., May 23rd, 1940.

NATIONAL MARITIME
UNION OF AMERICA,

Petitioner.

By JOSEPH CURRAN,

President.

WILLIAM L. STANDARD,
General Counsel to National
Maritime Union of America,
Office & P. O. Address
291 Broadway,
Borough of Manhattan,
City of New York.

UNINCORPORATED ASSOCIATION
VERIFICATION

State of New York,
County of New York—ss.

Joseph Curran, being duly sworn, deposes and says that he is the President of the National Maritime Union of America, Petitioner herein, that he has read the foregoing Petition and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters herein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by the National Maritime Union of America is because the said is an unincorporated Association, and deponent an officer thereof, to wit its President.

NATIONAL MARITIME UNION,
By JOSEPH CURRAN,
Pres.

Sworn to before me, this 24th day of May, 1940.

ABRAHAM WEISBERG,

Notary Public, Kings County, Kings County,
N. Y. [Clks' Nos. and Reg. Nos. illegible.]

Commission expires March 30, 1942.

[Endorsed]: Filed May 29, 1940.

[Title of Circuit Court of Appeals and Cause.]

SUGGESTIONS OF THE NATIONAL LABOR
RELATIONS BOARD WITH RESPECT TO
THE PETITION OF THE NATIONAL
MARITIME UNION OF AMERICA FOR
LEAVE TO INTERVENE.

The National Labor Relations Board does not oppose the petition of the National Maritime Union of America for leave to file a brief as *amicus curiae* and to argue orally in that capacity.

The Board deems it appropriate, however, to point out that, contrary to statements contained in paragraphs Third, Seventh, and Eighth of said petition, this proceeding is between the Board and petitioner, The Texas Company, that the Board acts solely "on behalf of the public" and not for the enforcement of any private right, and that the National Maritime Union of America has no legal or equitable right to seek enforcement of the Board's order herein under Section 10 of the Act. *Amalgamated Utility Workers v. Consolidated Edison Co.*, 60 S. Ct. 561, 563-565. Accordingly, the Board cannot acquiesce in the statements, contained in said paragraphs of the petition, that the Board is merely a "nominal" party to this proceeding and that "the dispute herein to be determined really exists between the National Maritime Union of America and The Texas Company."

Dated at Washington, D. C., this 5th day of June, 1940.

ROBERT B. WATTS,
Associate General Counsel,
National Labor Relations
Board.

[Endorsed]: Filed June 7, 1940.

At a Stated Term, to wit: The October Term A. D. 1939, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday, the tenth day of June, in the year of our Lord one thousand nine hundred and forty.

Present:

Honorable William Denman, Circuit Judge,
Presiding,

Honorable Clifton Mathews, Circuit Judge,
Honorable William Healy, Circuit Judge.

[Title of Cause.]

ORDER GRANTING MOTION FOR LEAVE
TO INTERVENE

The motion of National Maritime Union of America for leave to intervene and be made a party to the above-entitled cause for all purposes, for leave to file its brief, and for leave to argue orally

on the appeal herein, coming on regularly for hearing, and good cause therefor appearing,

It is ordered that said motion be, and hereby is granted, and said National Maritime Union of America be, and hereby is permitted to intervene and is made a party hereto for all purposes, for leave to file its brief, and for leave to argue orally on the hearing herein.

[Title of Circuit Court of Appeals and Cause.]

REPLY TO SUGGESTIONS OF THE NATIONAL LABOR RELATIONS BOARD

The National Maritime Union of America, replying to the argument adduced by the National Labor Relations Board, in opposition to the petition of the Union, for leave to intervene and be made a party, respectfully calls the attention of this Honorable Court to the case of *Waterman Steamship Corp. v. National Labor Relations Board, et al.*, 103 Fed. (2d) 157, which was heard by the United States Circuit Court of Appeals for the Fifth Circuit on April 11th, 1939, and in which case the undersigned was permitted to intervene by the Court on behalf of the National Maritime Union of America, the petitioner herein. That case arose out of a similar unfair labor practice and involved an appeal by the *Waterman Steamship Corp.* to set aside an order of the National Labor Relations Board.

The Court permitted the undersigned, as attorney for the National Maritime Union of America, to intervene, file a brief and engage in oral argument before the Court. In that case the Court also permitted the Seamen's Reorganization Committee, a rival union, to intervene and be heard.

We also wish to call the Court's attention to the case of the South Atlantic Steamship Company of Delaware v. National Labor Relations Board, Case No. 9491, which is now pending in the United States Circuit Court of Appeals for the Fifth Circuit, in which case the undersigned petitioned the Court for an order of intervention on behalf of the National Maritime Union of America, on a petition similar to the instant one. That petition was granted on the 3d day of May, 1940, by Hon. Samuel H. Sibley of the United States Circuit Court of Appeals.

In opposition to the petition of intervention in the South Atlantic Steamship Company case, the National Labor Relations Board, by Robert B. Watts, associate general counsel, submitted the same arguments to the United States Circuit Court of Appeals for the Fifth Circuit as are submitted herein.

The case of the Amalgamated Utility Workers v. Consolidated Edison Co., 60 Sup. Ct. 561, cited by the National Labor Relations Board in support of its argument, was also cited by the Board, in opposing the application in the South Atlantic Steamship Company case, *supra*, to the United States

Circuit Court of Appeals for the Fifth Circuit. By granting that motion, that Court overruled the objections of the National Labor Relations Board to the granting of the motion for intervention.

In the case of *Amalgamated Utility Workers v. Consolidated Edison Co.*, 60 Sup. Ct. 561, the United States Supreme Court merely held that the National Labor Relations Act conferred exclusive power upon the National Labor Relations Board to institute contempt proceedings for the violation of a Court decree, directing enforcement of the Board's order. That issue is not before this Court in the instant proceeding.

The mere refusal of the National Labor Relations Board to acquiesce in statements contained in the petition for leave to intervene, made by the National Maritime Union of America, does not constitute any valid argument for a denial of the within petition.

The National Maritime Union of America has a membership of more than 50,000 seamen, many of whom, in the course of their employment, serve on board the tankers of the Texas Company.

The National Maritime Union of America instituted the within proceedings before the National Labor Relations Board. Its counsel appeared at the hearings held by the National Labor Relations Board and participated in the proceedings, and its membership has a vital and substantial property interest in the determination of this appeal.

Wherefore, the National Maritime Union of America further prays that the petition to intervene and be made a party be granted.

Dated: New York, New York, June 10th, 1940.

WILLIAM L. STANDARD,
Attorney for National Mari-
time Union of America,
Petitioner.

[Title of Circuit Court of Appeals and Cause.]

MEMORANDUM IN OPPOSITION TO PE-
TITION OF NATIONAL MARITIME
UNION OF AMERICA FOR LEAVE TO
INTERVENE, ETC.

The Texas Company, petitioner in the above entitled proceeding, opposes the petition filed herein by the National Maritime Union of America for leave to intervene and to be made a party to the above entitled proceeding and for leave to file a brief and to argue orally, on the following grounds:

1) The proceeding and dispute herein is solely between the National Labor Relations Board and The Texas Company, and the Board is not, therefore, as alleged in the petition of the National Maritime Union, only a "nominal party".

2) The National Maritime Union has no legal or equitable right to enforce the Board's order in this proceeding. This right rests solely

with the National Labor Relations Board. See *Amalgamated Utility Workers vs. Consolidated Edison Co.*, 60 S. Ct. 561.

3) Section 10 (f) of the National Labor Relations Act provides that "any person aggrieved" by a final order of the Board may obtain a review of an order of the National Labor Relations Board. The "aggrieved" person in this proceeding is The Texas Company and not the National Maritime Union. No provision is made in the Act or in the rules and regulations issued of the Board for the Union to participate in a proceeding of this nature.

4) Under Rule 24 of the Federal Rules of Civil Procedure a petition for intervention is ordinarily not allowed in an appellate court. See *Morin vs. City of Stuart* (C. C. A. 5th Cir., Dec. 12, 1939) Federal Rules Service, Index No. 24 b.4, Case No. 2.

5) No question of great public importance is alleged to be involved in this proceeding which might justify granting to the National Maritime Union the right to appear or file a brief herein.

Wherefore, The Texas Company respectfully prays that this Court deny the petition to intervene herein made by the National Maritime Union of America.

Dated: New York, N. Y., June 8, 1940.

ALBERT E. VAN DUSEN,

135 East 42nd Street,

New York City, N. Y.

J. A. McNAIR,

929 So. Broadway,

Los Angeles, California.

JAMES H. PIPKIN,

P. O. Box 2332,

Houston, Texas.

Attorneys for Petitioner,

The Texas Company.

[Title of Circuit Court of Appeals and Cause.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW AND REQUEST FOR THE ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board and, pursuant to the National Labor Relations Act (49 Stat. 449, C. 372, 29 U. S. C. sec. 151, et seq.), files this answer and request for enforcement of its order heretofore issued against The Texas Company, the petitioner herein:

1. The Board admits the allegations contained in paragraph I of the petition for review.

2. With respect to the allegations contained in paragraphs II to XI, inclusive, of the said petition for review, the Board, answering, prays reference to the certified transcript of the entire record in the proceedings before the Board, filed herewith, for a full, exact and complete statement of all the proceedings had in this case and of the pleadings, testimony and evidence, findings of fact, conclusions of law, and order, of the Board.

3. The Board denies the allegations contained in paragraph XII of the petition for review and further denies each and every allegation contained in the sub-sections thereunder numbered (1) to (12), inclusive, of the said petition.

4. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order, were and are in all respects valid and proper under the National Labor Relations Act.

Wherefore, the Board respectfully prays this Honorable Court that said petition be denied in so far as it prays that the order of the Board be set aside, and in so far as it prays that said order be stayed pending final disposition of this review.

Further answering, the Board, pursuant to Section 10(e) and (f) of the National Labor Relations Act, respectfully requests this Honorable Court for the enforcement of the order issued by the Board on

January 24, 1940, in the proceedings instituted by it against the petitioner, The Texas Company, said proceedings being designated on the records of the Board as Case No. C-1276, the title thereof being "In the Matter of The Texas Company, Marine Division and National Maritime Union, Port Arthur Branch."

In support of this request for enforcement of its said order, the Board respectfully alleges as follows:

(a) Petitioner, a Delaware corporation, is engaged in business in the State of Texas, within this Judicial Circuit. By reason thereof, this Court has jurisdiction of the petition to review herein and of this request for enforcement by virtue of Section 10 (e) and (f) of the National Labor Relations Act.

(b) Upon all proceedings had in said matter before the Board, as more fully shown by the certified transcript of the entire record thereof, filed herewith, to which reference is hereby made, and including, without limitation, complaints, amendments thereto, answers, hearing for the purpose of taking testimony and receiving other evidence, intermediate report and exceptions filed thereto, and written and oral argument before the Board, the Board, on January 24, 1940, made its decision, duly stated its findings of fact and conclusions of law and issued an order, directed to the petitioner, its officers, agents, successors and assigns. So much of said order as relates to this proceeding reads as follows:

ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Texas Company, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in National Maritime Union of America, Port Arthur Branch, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment, or any terms or conditions of their employment, because of membership or activity in connection with any such labor organization;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist National Maritime Union of America, Port Arthur Branch, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed by Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Make whole Clarence Buckless for any loss of pay he may have suffered by reason of the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages—including therein the reasonable value of his maintenance on shipboard—from April 18, 1938, the date of such discrimination, to June 1, 1938, the date upon which he was reinstated by the respondent, less his net earnings during such period; deducting, however, from the amount otherwise due to him monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other governments which supplied the funds for said work-relief projects;

(b) Offer to J. Gordon Rosen immediate and full reinstatement to his former position held on July 14, 1938, or to a substantially equivalent position without prejudice to his seniority and other rights and privileges previously enjoyed by him;

(c) Make whole J. Gordon Rosen for any loss of pay he may have suffered by reason of

the respondent's discrimination in regard to his hire and tenure of employment by payment to him of a sum of money equal to the amount which he normally would have earned as wages—including therein the reasonable value of his maintenance on shipboard—from April 19, 1938, the date he was discriminatorily discharged from and refused reinstatement on the S. S. Nevada, to June 1, 1938, when the respondent rehired him on the S. S. Washington, and from July 14, 1938, the date he was discriminatorily discharged from and refused reinstatement on the S. S. Washington, to the date of the offer of reinstatement, less his net earnings during such periods; deducting, however, from the amount otherwise due to him monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other governments which supplied the funds for said work-relief projects;

(d) Immediately post notices to its employees in conspicuous places on its docks and on its vessels, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating that the respondent will cease and desist in the manner set forth in paragraphs 1 (a) and (b) of this

Order; that it will take the affirmative action set forth in paragraphs 2 (a), (b), and (c) of this Order; and that its employees are free to become or remain members of the National Maritime Union of America, Port Arthur Branch, and that it will not discriminate against any employee because of membership or activity in that organization;

(e) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and transcript to be served upon petitioner, that this Court take jurisdiction of the proceedings in Case No. C-1276 and of the questions determined therein, and make and enter upon the pleadings, testimony and evidence a decree denying in whole the petition to set aside, vacate and annul the order of the Board and enforcing in whole the order of the Board and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR

RELATIONS BOARD,

By CHARLES FAHY,

General Counsel.

Dated at Washington, D. C., this 24th day of June 1940.

District of Columbia—ss.

Charles Fahy, being first duly sworn, states that he is General Counsel of the National Labor Relations Board, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

CHARLES FAHY,
General Counsel.

Subscribed and sworn to before me this 24th day of June 1940.

(Seal) DANIEL T. GHENT, JR.,
Notary Public, District of Columbia.

My commission expires August 31, 1944.

[Endorsed]: Filed June 26, 1940. Paul P. O'Brien, Clerk.

[Title of Board and Cause.]

TESTIMONY

BOARD'S EXHIBIT No. 5

[Title of Board and Cause.]

STIPULATION

It is hereby stipulated by and between the counsel for The Texas Company, Marine Division, and Counsel for the Sixteenth Region National Labor Relations Board, that the following facts are true

and correct and may be so found by the National Labor Relations Board or any appropriate court of the United States. Nothing herein, however, shall preclude the respondent or the National Labor Relations Board from submitting such further and additional evidence as might be deemed necessary by either of the parties of this stipulation.

The predecessor company of the present The Texas Company was originally chartered under the laws of Texas in 1902. The present The Texas Company, respondent herein, was chartered in Delaware in 1927, and is a wholly owned subsidiary of The Texas Corporation.

That its officers are: T. Rieber, Chairman of the Board; W. S. S. Rodgers, President.

That its principal business and executive offices are located at New York City and Houston, Texas.

The Superintendent of its Galena Park Refinery is S. W. Darling; and of its Port Neches Works, Dr. F. S. Dengler.

The present capitalization of The Texas Company is \$250,000,000.00 or more.

The gross receipts of The Texas Company for the last fiscal year were in excess of \$280,000,000.00.

According to its last franchise tax return to the Secretary of State of Texas, covering the fiscal year ending December 31, 1937, 13.809 per cent of its business was reported as intrastate, and 86.191 per cent as interstate in character.

Respondent operates a refinery at Galena Park, Texas, near the City of Houston. At this refinery

a variety of petroleum products are manufactured. Chief among these are gasoline and fuel oils. Gasoline is the principal product, better than 25 per cent of the total throughput of crude being devoted to the production of gasoline.

The crude oil used in the Galena Park Refinery comes principally from producing wells in Texas and New Mexico. Most of the crude moves to the refinery through pipe lines operated by The Texas New Mexico Pipe Line Company, the majority of the stock in which is owned by The Texas Corporation. This company is a common carrier, with tariffs prescribed by the Interstate Commerce Commission.

A negligible amount of crude is received via tank cars.

The average daily throughput of the refinery is approximately 20,000 barrels. Of the finished products, approximately 75 per cent are shipped out of Galena Park via sea-going tankers destined for points outside of the State of Texas.

Unfinished crude distillates are pumped via pipe line to the Port Arthur, Texas, refinery of the respondent company.

The Galena Park Refinery is adjacent to the Houston ship channel, a deep sea outlet to the Gulf of Mexico, and on the company's property are docks at which tankers are loaded.

The Port Neches Works of The Texas Company are located at Port Neches, Texas. The principal

products manufactured at the Port Neches Works are roofing, asphalt, steel barrels, wood barrels and drums. The principal raw materials used are crude oil, felt, sheet steel, wood staves, slate, paper and nails. The daily average throughput of crude oil is approximately 25,000 barrels. Most of the crude is obtained from the States of Texas and Louisiana, but substantial quantities arrive by tanker and barge from Mexico.

All of the felt, slate, sheet steel and paper is procured from sources outside of the State of Texas.

At the Port Neches docks are berths for sea-going vessels. Most of the roofing and asphalt leaves the Port Neches Works via tanker and/or freighter bound for destinations outside of the State of Texas. All of the barrels and drums manufactured at Port Neches are utilized by the respondent as containers for its own products.

That portion of the daily throughput which is not used in the production of asphalt is pumped, after the primary distillation process, to another refinery of the respondent at Port Arthur, Texas, ten miles away, where the refining process is completed. In finished form, a substantial per cent of the crude oil distillates pumped to Port Arthur eventually reach a destination outside of the State of Texas.

Products of The Texas Company are in part distributed by means of 2,100 wholesale outlets and over 40,000 retailers located in most of the states of the United States. Most of these products carry registered trade-marks.

The Texas Company, the respondent herein, owns, maintains and operates through what is known as its Marine Division, approximately twenty-eight ocean going vessels, having an average capacity of 11,000 tons, all said vessels being registered with the United States Department of Commerce. The respondent maintains its principal office for Marine Division in New York City, New York, and all other offices in Chicago, Ill., Norfolk, Virginia, Los Angeles, California, and Port Arthur, Texas.

Said vessels are used by the respondent in transporting the aforesaid petroleum and all petroleum products of the respondent between the Gulf Ports listed below and the following ports of the United States and foreign countries:

Port Arthur, Houston, Corpus Christi, Texas
New Orleans, La.,
Tampa, Florida,
Claymont, Delaware
Providence, R. I.
Norfolk, Virginia
Portland, Oregon
Seattle, Washington
San Francisco, California
Liverpool, England
Rio de Janeiro, Brazil
Curacao, Dutch West Indies
Mobile, Alabama
Charleston, South Carolina
Bayonne, N. J.

Portland, Maine

Baltimore, Md.

Los Angeles, California

All of said vessels may touch the ports above mentioned, and eventually, and from time to time, touch the port of the respondent Company at Port Arthur, Texas.

THE TEXAS COMPANY,
ALBERT E. VAN DUSEN,

By JAMES H. PIPKIN,
A. E. VAN DUSEN,

Attorney,

JAMES H. PIPKIN.

Attorney.

NATIONAL LABOR
RELATIONS BOARD,

By E. P. DAVIS.

By A. B. MARTIN.

J. P. RONEY

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Myers: Give your name and address to the reporter.

The Witness: My name is J. P. Roney. My address is 135 East 42nd Street, New York City. That is my business address.

(Testimony of J. P. Roney.)

Q. (By Mr. Davis) Where do you live, Captain Roney? A. Delanco, New Jersey.

Q. And what is your occupation?

A. General marine manager of the Marine Department of The Texas Company.

Q. Do you have any immediate superiors or any superiors within that department?

A. One, yes.

Q. And who is that? A. Mr. T. Riever.

Q. And what is his position? [14*]

A. He is chairman of the Board of Directors and has immediate executive charge of the Marine Department.

Q. And who is immediately subordinate to you?

A. Mr. Charles Jackson.

Q. Where is he located? A. New York.

Q. I believe you stated that your offices are in New York? A. Yes, sir.

Q. Without naming the number of offices that you have outside of the New York office, do you have in charge of each one of those offices some individual who is subject to your directions?

A. Yes, sir.

Q. Do you have such an office in Port Arthur, Texas? A. Yes, sir.

Q. And who is in charge of the Port Arthur office? A. C. L. Hand.

*Page numbering appearing at top of page of Original Reporter's Transcript.

(Testimony of J. P. Roney.)

Q. And he occupies about the same position that your managers in your other offices occupy?

A. Yes, sir.

Q. Will you please state in your own words as briefly as possible the duties of Mr. Hand?

A. Well, he has the supervision of the operation of the ships, of the shore personnel belonging to the department, the dispatch of the ships, designating, under other instruc- [15] tions, what the ships will load and what their destinations will be.

Q. Now does he have supervision over all Texas Company ships or just those that come into port at Port Arthur?

A. Yes, sir, that is all he has. I might add Houston there too, the few that go to Houston, Texas.

Q. And if any of your ships stop at Corpus Christi, does he have supervision over those?

A. Yes, he would have.

Q. Do some of your ships stop at Corpus Christi, Texas? A. To load, yes, sir.

Q. They load at Corpus Christi?

A. Yes, sir.

Q. And do they unload at Port Arthur?

A. Yes.

Q. Is Mr. Hand also the personnel manager?

A. Yes, of the ships in this district.

Q. Does he have anybody working under him to whom he has delegated authority to hire and fire seamen? A. No, sir, not authority.

(Testimony of J. P. Roney.)

Q. I beg your pardon?

A. He has never delegated any one that authority.

Q. Then Mr. Hand himself does the hiring and firing of seamen who are needed in ports over which he has jurisdiction? [16]

A. No, the masters of the ships; the captains of the ships have that jurisdiction.

Q. Well, does Mr. Hand recommend a seaman to the captain?

A. No. If a seaman is wanted the captain might notify Mr. Hand that a certain grade of man is needed.

Q. And does Mr. Hand get that man then?

A. Yes, sir.

Q. Then Mr. Hand would get that man?

A. Yes, sir.

Q. And then he would report to the captain?

A. He would report to the captain.

Q. And does the captain have to approve that man before he is finally employed?

A. Yes.

Q. Does your testimony in that regard apply both to licensed and unlicensed personnel?

A. Yes.

Q. Are you familiar with the method by which seamen are selected in Port Arthur?

A. I don't know that I am, no.

Q. Do you know from what source they secure seamen? Let's say that the captain needs an able-bodied seaman and he passes that information on

(Testimony of J. P. Roney.)

to Mr. Hand. Then how does Mr. Hand find an able-bodied seaman?

A. I am not positive of this, but I think there is an outfit [17] down here, the Seamen's Church Institute, that we generally employ our men through.

Q. Is that agency independent of The Texas Company? A. Yes, sir.

Q. Do you know by what institution it is maintained, if any?

A. I understand the churches contribute to it. It is a charitable organization.

Q. And then it is your understanding that seamen out of employment register there?

A. Yes, sir.

Q. And Mr. Hand, in the main, calls that place for seamen?

A. Yes, sir, that is my understanding.

Q. What is the average number of employees employed on one of your ships?

A. Well, they vary from 33 men to 42 or 43, depending on the class of ship it is.

Q. Are you familiar with the SS "Nevada"?

A. Yes, sir.

Q. How many men on an average do you employ on that ship? A. 33 on an average.

Q. Then that ship is below the average in size? Is that what you mean?

A. No. We have, oh, about I think it is 16 ships of about that size. [18]

(Testimony of J. P. Roney.)

Q. And these others are larger?

A. Some are and some smaller.

Q. Would you say the "Nevada" is about the average?

A. The average ship, yes, sir.

Q. Now of the personnel on the ship, is the captain in charge? A. Yes, sir.

Q. And who is next in authority after the captain? A. The mate.

Q. The first mate? A. Yes.

Q. How many mates do you have on the average ship? A. Three.

Q. Those are the first, second and third mates?

A. Yes.

Q. Is there any difference in the authority or the duties of the first, second and third mates?

A. Yes, the first mate is immediately under the direction of the master. When the master is ashore the first mate is in charge of the ship.

Q. And in case the first mate was ashore would the second mate be in charge? A. Yes.

Q. And so on down through the third mate?

A. Yes. [19]

Q. Is there ever an occasion when the captain as well as all three mates are off the boat?

A. Never.

Trial Examiner Myers: Well, isn't the second mate in charge of a certain class of employees, like the engineers?

(Testimony of J. P. Roney.)

A. No. The engineers are another matter. The master is in predominate charge.

Q. When all three mates are on the ship as well as the captain what are the duties of the second and third mate?

A. Well, depending. If the first mate is on watch below the second mate will take charge of the deck for discharging or loading, whatever it happens to be.

Q. All right, and if one of the mates happens to be indisposed or off duty or something, then the third mate might be on watch? A. Yes, sir.

Q. And he would be in full charge under those circumstances?

A. Yes, sir, if the master wasn't aboard. Of course if the master is aboard, he supersedes all the rest of them.

Q. Well, is it or not the duty of the mates to be from place to place on the ship all the time or do they have definite assignments to particular positions? A. You mean position on the deck?

Q. Yes.

A. No, there is no particular—if the ship is discharging, [20] why the mate is either on the bridge deck or on the main deck down at the hose.

Q. Well, in case the captain is asleep, is the first mate then in charge?

A. Yes, unless some emergency arose. Then he would call the master.

(Testimony of J. P. Roney.)

Q. Then say one of the other mates has to be down below, then either the second or the third mate is in charge on the deck?

A. Yes. They alternate in watches, you know.

Q. Do you issue definite instructions to your ships' masters as to whether or not they should at all times be in complete charge of the ship or is it left up to their discretion as to whether or not they delegate certain powers and certain duties to the first, second and third mates?

A. No, that is a matter that is understood.

Q. What is the understanding?

A. The understanding is that the master is in command of the ship and if he goes ashore and the mate is aboard he automatically takes charge of the ship.

Q. Well, in case the master is on the ship as well as the mates, just what authority do the mates exercise?

A. I don't imagine—with reference to anything with relation to the ship's business they would call the master on the ship. I don't mean as to discharging seamen, but I mean as to [21] general discharge of the cargo; unloading of the cargo.

Q. In other words, if anything unusual comes up, why, they consult the master before it is done?

A. Yes.

Q. But ordinarily in the routine operation or sailing of a ship the mates may and do issue orders and directions to the seamen working under them?

(Testimony of J. P. Roney.)

A. Yes.

Q. What is a boatswain?

A. Well, he is the—he is what might be designated as a foreman; foreman directly in charge of the sailor personnel.

Q. And that is ordinarily known as the deck crew or deck department? A. Yes. [22]

Q. And he, in turn, is subject to direction by the major companies? A. Yes.

Q. And the boatswain directs the work of the men on the deck in loading and unloading cargo?

A. Yes, and general upkeep of the ship.

Q. And issues orders from time to time for certain things to be done, is that right?

A. Well, he is told what word to pass on to the men. He does not use his own discretion in other words.

Q. Then your testimony is that the boatswain in the main passes orders on to the men that have been passed to him by one of the mates or by the master? A. Yes.

Q. Well, say in case you were out on the high seas and something went wrong and came to the attention of the boatswain, would he out of necessity have to go to one of the mates or to the Master before he could issue orders to the sailors to take care of it?

A. Ordinarily yes. He would report to the mate on watch.

(Testimony of J. P. Roney.)

Q. Say some of the cargo was being washed away or some of the equipment was being washed off the decks in high seas?

A. Well, it wouldn't be necessary for him to report to the mate. He would endeavor to correct it.

Q. He would go ahead and issue orders to take care of what [23] was wrong? A. Yes.

Q. And do you have what is known as quartermaster?

A. Yes, sir, we have them on some of our ships and on some of them we haven't. I would say generally we have quartermasters.

Q. And what are the duties of the quartermasters? A. Wheelsman; helmsman.

Q. In other words, he pilots the ship?

A. No.

Q. What does he do?

A. Why, he steers the ship. There is quite a distinction between steering a ship and piloting a ship. He receives his orders from the officer on watch, whether he should go north, northwest or east, southeast, or the other directions of the compass. He has no discretion, except he obeys orders of his superior officer on watch.

Q. And who is that superior officer?

A. The Master, or one of the three mates.

Q. Is a quartermaster's position considered by seamen a better position than that of an able bodied seaman?

(Testimony of J. P. Roney.)

A. Yes, I would say so. He gets a little more money, which after all is what they are after.

Q. And it is a little easier job?

A. Well, that is according to how you look at it. Standing [24] four hours at the wheel isn't so darned easy. I think the average seaman would rather be a seaman than a quartermaster. I may be mistaken at that.

Q. Isn't it your experience that they have to spend a number of years before they are qualified to be a quartermaster?

A. No. The average A. B. would be qualified.

Trial Examiner Myers: The average what?

A. The average A. B. sailor; able bodied seaman.

Q. (By Mr. Davis) Do able bodied seamen ever relieve the quartermaster at the wheel?

A. Yes. If the quartermaster has to leave for any particular purpose, they would be called.

Q. And then he may pick up any able bodied seaman that happened to be around?

A. Yes.

Q. And does he select that seaman, or does he report to the mate or the Captain?

A. He probably reports to the mate and the mate calls a seaman.

Q. Do you know that is the way it happens?

A. Yes.

Q. And that is all that a quartermaster does? He stands at the wheel for four hours?

(Testimony of J. P. Roney.)

A. Yes, and then he stands four more. He has the same number of hours as the rest, but he stands what you might term the [25] gangway watch when the ship is alongside the dock.

Trial Examiner Myers: Four on and eight off?

A. Yes, sir.

Q. (By Mr. Davis) He doesn't do any work that is ordinarily done by a seaman?

A. No, not necessarily.

Q. Are quartermasters paid on a monthly basis?

A. Yes, sir.

Q. And your seaman, ordinary seaman as well as your able bodied seamen, are also paid on that basis?

A. Yes. They are paid at the monthly rate.

Q. It is understood that when a man takes a position as quartermaster that his job, as you have described it, is all that he will have to do and to stand watch in port as you have just stated?

A. Yes.

Q. In other words, he is not supposed to do any painting; he is not supposed to do any loading or unloading of cargo or anything of that nature?

A. I don't think they are. They used to keep the bridge clean, but I think that is no longer necessary.

Q. Now, you do have on your ship what is known as ordinary and able bodied seamen, do you not?

A. Yes, sir.

(Testimony of J. P. Roney.)

Q. Will you state what the difference between those two is?

A. One of them has an A. B. certificate and the other has an [26] ordinary certificate.

Q. And to get an A. B.'s certificate, does it require a number of years of seamanship?

A. I believe it is three years.

Q. And an ordinary seaman must be somebody that you might have——

A. (Interrupting) It seems to me it is six months. I don't know. I think it is six months. I wouldn't be positive of that, but I think it is.

Q. How do you classify them if you pick one up? Say the first day on a ship?

A. Well, you look at his so-called certificate.

Q. Well, the point is when does he become what you term an ordinary seaman?

A. After he gets his certificate in——

Trial Examiner Myers: How does he get his certificate is what Mr. Davis wants to know.

A. Through the Steamboat Inspection Service.

Trial Examiner Myers: What experience must he have before he gets his certificate?

A. You can't prove it by me. I think it is three years. They have to show three years' experience for an A. B. certificate and they put them through some examination, probably up in the office of the Steamboat Inspection Service. What the examination is I don't know. [27]

(Testimony of J. P. Roney.)

Trial Examiner Myers: Well, now, he is talking about an ordinary seaman.

A. Well, he has to be at least six months at sea, I think. Now, what his examination consists of, I don't know that either.

Q. (By Mr. Davis) Does he have to take that examination before he ever goes aboard?

A. No, before he has his certificate.

Q. Maybe I haven't made myself clear, but I want to know how he is classified within the first six months period. Say you go out here and pick up a man who has never seen the sea before and he gets on this ship, how is he classified before he does qualify as an ordinary seaman?

A. Well, we wouldn't carry him. We wouldn't take a man of that category.

Trial Examiner Myers: Why?

A. Because he hasn't a certificate.

Trial Examiner Myers; Well, what does he have to do before he gets his certificate?

A. I don't know. He has to have his papers before we take him, because we are required to carry a certain percentage of ordinary and AB seamen. I think it is six A. B.'s and three ordinarys, and they have to have a certificate before we can carry them.

Q. (By Mr. Davis) All right. Now, how many general depart- [28] ments do you have on a ship, Captain Roney? Do you have a deck department?

(Testimony of J. P. Roney.)

A. Deck department, engineer department and steward's department.

Q. And I believe your testimony is that the boatswain is in direct charge of the deck department?

A. The personnel of the unlicensed men in the deck department, yes.

Q. And that includes all ordinary and able bodied seamen? A. Yes.

Q. And who has charge of the engineer's department?

A. The chief engineer or the first assistant. The first assistant occupies the same position in the engine room as the mate does on deck.

Q. I see.

Trial Examiner Myers: That is what I meant before.

A. Yes, that is right.

Q. (By Mr. Davis) How many assistants does the chief engineer have? A. Three.

Q. And would you say their authority compared to the authority of the first, second and third mates in the absence of the chief engineer?

A. Yes, as far as the work of the ship is concerned, yes. [29] If they want to discharge a man they report to the Master.

Q. The engineering department is not subject to direction or supervision from the mates? They are only subject to the directions of the Master himself?

(Testimony of J. P. Roney.)

A. Well, I wouldn't say that. If the Master was ashore, why, the mate would be in charge of the ship.

Q. The mate would be in charge and would have authority to issue directions to the chief engineer?

A. Yes, he would have the authority, but I doubt if he would do it, not knowing anything about it. Not knowing anything about it, I doubt if he would tell the chief engineer what mechanical work to do.

Q. But theoretically he is in charge of the ship?

A. Theoretically he is, yes, sir.

Q. From a practical standpoint the chief engineer is always in complete charge, or, in his absence, his assistant, of the engine department?

A. Yes.

Q. And do you have a chief steward?

A. Yes.

Q. And does he have any assistants?

A. Yes, he has a cook and some of the ships three mess men, and some of ships four mess men; some of them a second cook; two cooks. [30]

Q. But the chief steward is in complete charge of the department?

A. No, he is under the Master's direction; not in the cooking of the food, but generally speaking he is under him more directly than he would be under the engineer's.

Q. But is he in charge of the cook and the mess boys and so forth? A. Yes, sir.

Q. That is the chief steward? A. Yes.

(Testimony of J. P. Roney.)

Q. What are the duties, say, of a mess boy?

A. Well, the cabin mess boy waits on the officers' table and ordinarily makes the beds of the officers.

Q. Do you have such a thing as a saloon mess boy?

A. Well, we call them officers' mess boys.

Q. And they wait on the officers' table?

A. On the officers' table, yes.

Q. In other words, they are general handy men around the officers' quarters? A. Yes.

Q. Cleaning up for them, making beds, waiting on the table and so forth? A. Yes.

Q. Now, do you have any other departments that we have not mentioned, Captain Roney?

A. No, sir. [31]

Trial Examiner Myers: Who is in charge of the unlicensed personnel?

A. In direct charge?

Trial Examiner Myers: Yes.

A. Well, the boatswain is the man that issues orders to them, but the Master or the mates.

Q. (By Mr. Davis) Do you have what is known as a pumperman? A. Yes.

Q. Do you have more than one?

A. Two. Yes, we have two.

Q. And are they classified as first and second pumpman? A. Yes.

Q. Does one have any jurisdiction over the other, or any authority over the other?

(Testimony of J. P. Roney.)

A. Not written authority. The first pumpman, of course, is probably a more experienced man than the second pumpman.

Q. And in the ordinary course of their work, why, the first pumpman gives directions, to say the least, to the second pumpman?

A. No, I don't know that they do. The pumpmen are actually under the directions of the engine department. When cargo is being discharged they are under the directions of the deck department, and the deck department is responsible for the loading and discharging of the ship. [32]

Q. Now, that means that they are at all times while at sea subject to the directions of the chief engineer, or his assistant in his absence?

A. Yes, the engine department.

Q. And while they are in port they are subject to directions of the boatswain?

A. No, no; one of the mates or the master. That is when the ship is loading or discharging.

Q. What does the pump man do? What is the nature of his work?

A. Well, he is what you might term a machinist that moves valves and replaces valves of his cargo pumps and in port, why, of course, he handles the valve for discharging; loading or discharging.

Q. Do you have wireless operators on ships?

A. Yes.

Q. One on each ship?

A. One.

(Testimony of J. P. Roney.)

Q. And is he under the immediate supervision of the master or——

A. (Interrupting) The master.

Q. Do you have a man employed in Port Arthur by the name of Meyers?

A. I believe there is.

Q. Do you have more than one man by the name of Meyers employed? [33]

A. Yes, I am not positive of that. I think one is named Myer and the other is named Meyers.

Q. What are the duties of Mr. Meyers?

A. Well, he is the man to contact the Seamen's Church Institute, for instance, to pick up a man or men.

Q. Is his initial E. Meyers?

A. Offhand I wouldn't be able to say.

Q. Is it the Mr. Meyers who is commonly known as Two Gun Meyers?

A. You can't prove it by me. I never heard him called that. I never say him carrying any guns. He never pulled one on me anyway.

Q. What title does this Mr. Meyers have?

A. I don't think he has any title. His duty is to secure men.

Q. I believe you testified that you didn't know his title? A. I don't think he has a title.

Q. But in the main his duties are to secure additional seamen when they are needed?

A. Yes.

(Testimony of J. P. Roney.)

Q. Do you know offhand any other duty that he has besides that?

A. I don't know of anything else that he does.

Q. Now, does Mr. Hand have any assistance also by the name of Myer or Meyers? [34]

A. Yes.

Q. Is it Meyers?

A. Whichever it is, yes. He has nothing to do with the men. He is the loading and discharging man under Mr. Hand. He has no title either.

Q. You mean by that that he has supervision of loading and discharging of ships?

A. Yes, loading and discharging of cargoes, yes.

Q. Now, is he in charge of the seamen while that is being done or are they still under the supervision—

A. (Interrupting) Still under the supervision of the mates.

Q. In other words, they are at all times under the supervision of the master or one or more of the mates? A. Yes.

Mr. Davis: I believe that is all.

Cross Examination

Q. (By Mr. Van Dusen) Mr. Roney, Mr. Hand is in charge of your so-called southern division?

A. Yes, sir.

Q. And he takes his instructions from you?

A. Yes, sir.

(Testimony of J. P. Roney.)

Q. Now, referring to Mr. Hand as personnel manager, you mean that he is in charge of the Port Arthur office and you don't mean that he determines which seamen are put on the ships? That is up to the captain, isn't it? [35]

A. That is up to the master, yes, sir.

Q. Now, these seamen, that you say are selected on each trip, signed shipping articles, isn't that correct?

A. That is correct.

Q. And these shipping articles provide for discharge at a coastwise port or at Port Arthur?

A. Yes, sir.

Q. Within a specified time? A. Yes, sir.

Q. When those shipping articles terminate and there is a discharge, the discharge is filed, isn't it, with the Bureau of Navigation in Washington; that is, a copy is filed?

A. Yes, a copy is sent. Coastwise articles as well.

Q. And a copy also to the collector of customs?

A. No, I don't think so. I don't think the collector of customs has anything to do with that phase of it.

Q. Well now, in referring to hiring and firing, what you mean is that the shipping articles come to an end and seamen are discharged under those articles?

A. Yes.

Q. And it is a question then of whether you take a man on new articles or not, is that correct?

A. That is it, yes, sir.

(Testimony of J. P. Roney.)

Q. Now, about this boatswain, are you required by law to have a boatswain? [36]

A. No, you are not.

Q. He is merely A.B. seaman who is selected for his particular work, is that correct?

A. Yes, I don't think he even has to be an A.B.

Q. Is that so.

A. You are not compelled to carry a boatswain by law.

Q. Now, the quartermaster, his duties primarily are to steer the ship? A. Right.

Q. Isn't it true, however, that the captain may, if he wants to, give him other duties to perform.

A. Well, I doubt that.

Q. I mean if the captain considers it necessary.

A. You see, the quartermaster will work his eight hours at the wheel.

Q. Well, assuming that the captain gave him other duties, of course, the captain would have to relieve him?

A. He would do it, yes, sir.

Trial Examiner Myers: Then he would no longer be a quartermaster?

A. Well, that is his title.

Trial Examiner Myers: Well, if he is going to be an ordinary seaman he wouldn't be a quartermaster, would he?

A. Well, it just depends. He has eight hours a day to work. I understand he is watching the wheel for eight hours. If [37] the captain wants him to

(Testimony of J. P. Roney.)

do anything else and the quartermaster is more or less agreeable to it, he would give him overtime for it. [38]

Q. (By Mr. Van Dusen) But the captain may, if he wants to, give him other duties to perform?

A. Yes.

Trial Examiner Myers: That is if the quartermaster is willing?

Q. Yes. The master has entire charge; entire charge of the chief engineer too, as far as that is concerned, but he wouldn't tell the chief engineer what to do with his machinery.

Q. (By Mr. Van Dusen) Now, Mr. Roney, in referring to these titles as A. B. seamen and ordinary seamen, although these men have general duties to perform, the captain nevertheless can vary those duties if he considers it necessary, is that so?

A. Yes, sir.

Q. In other words, he is in complete command of the ship? A. Yes.

Q. Now the chief engineer, you say he is in charge of the engine department. You mean the mechanical operation of the ship?

A. Yes, sir.

Q. The power plant of the ship? A. Yes.

Q. As far as the general administration of the ship and orders is concerned, the men under the engineer are subject to the captain and the first mate, isn't that correct? [39]

A. As well as any other man on the ship.

(Testimony of J. P. Roney.)

Q. Now just one more question: This man Meyers who selects seamen, he merely gets the type of seamen that the captain wants?

A. Yes, sir.

Q. He can't tell the captain what seaman to take?

A. No.

Q. He can't tell the captain what seaman not to take?

A. No.

Q. He is merely a placement man for the captain, isn't that correct?

A. That is it.

Mr. Van Dusen: That is all.

Redirect Examination

Q. (By Mr. Davis) Do you know how seamen are selected at this Seamen's Institute; whether or not this Mr. Meyers just goes down there and picks out a man or whether a list of names is called off?

A. I don't know.

Q. Now will you state the different types of shipping articles?

A. Yes. They have a shipping article that the men sign when they are in coastwise voyages and when they sign for a foreign voyage before the United States Commissioner it is a different type of article, but there is very little difference [40] in the wording.

Q. For foreign voyages they have to sign those before a Shipping Commissioner?

A. A Shipping Commissioner, yes, sir.

(Testimony of J. P. Roney.)

Q. And they don't have to on coastwise voyages?

A. No.

Q. Is that true also of intercoastal voyages?

A. No. Intercoastal is signed before a Commissioner.

Q. Intercoastal and foreign? A. Yes.

Q. What is the custom as to when a seaman is advised that his shipping articles will not be renewed?

A. Ordinarily when the man—it may be two or three days before the termination of the articles or it may be when the man is being paid off. Ordinarily they give that advice some two or three days before when on the voyage. Our custom is to square up with our crew at Port Arthur or some other southern port like Houston.

Q. Do they have to sign separate shipping articles for each voyage? A. Yes.

Q. And that is regardless of whether it is foreign or coastwise? A. Yes.

Q. And then it is the usual thing for masters of your ships [41] to advise them a day or so before they get into port? A. Yes.

Q. And is it usual or unusual for them to sign new shipping articles before they get into port?

A. No.

Q. Well, is it usual for them to do that? When do they ordinarily sign the new articles?

(Testimony of J. P. Roney.)

A. They ordinarily sign when the men are paid off. If they are going to continue on the ship, then they sign new articles.

Q. Before they get off the ship? A. Yes.

Q. Who signs those shipping articles?

A. Who signs them?

Q. Yes, sir.

A. The men themselves and the master.

Q. The men themselves and the master of the ship? A. Yes, sir.

Q. Does anybody else besides the master sign them? A. No, sir.

Q. Does the Commissioner have to sign them when they are signed before him?

A. Yes, sir, the Commissioner signs them.

Q. Could you obtain for us, Captain Roney, a copy of the coastwise shipping articles and also the foreign shipping [42] articles so we will know what each of them shows?

A. I will produce the coastwise and I expect the Commissioner will give me a copy of the other. I am quite sure he will.

Mr. Van Dusen: I will produce a copy of the coastwise articles and if we can get a copy of the Commissioner of the others we will produce them.

Mr. Davis: All right. Thank you.

Recross Examination

Q. (By Mr. Van Dusen) Just this one question: What do you mean by "intercoastal"?

(Testimony of J. P. Roney.)

A. Well, say, from Port Arthur to Los Angeles.

Q. Does the Commissioner have to sign them?

A. Yes, sir.

Q. But you don't mean that he has to sign articles for trips up the Gulf Coast? A. No.

Trial Examiner Myers: Intercoastal is different from coastwise? A. Oh, yes.

Q. (By Mr. Van Dusen) You mean east and west coast?

A. Yes, sir, that is it. In other words, through the canal, the Panama Canal, is intercoastal.

Q. Trips to the west coast, that is intercoastal?

A. Yes, sir.

Q. And if the ship stays on the east coast that is coastwise? [43] A. Coastwise, yes, sir.

Q. If it is an intercoastal voyage you need a Commissioner to sign? A. Yes, sir.

Trial Examiner Myers: When the Captain asked Mr. Hand for some men and Mr. Hand sends some men to him, isn't it usual that the captain accepts the men that Mr. Hand sends him?

A. Not necessarily.

Trial Examiner Myers: But I mean as a usual run of things. A. Oh, yes.

Trial Examiner Myers: And the same applies to Meyers? That is when Meyers picks some one?

A. Yes, sir.

Trial Examiner Myers: The captain ordinarily accepts them?

(Testimony of J. P. Roney.)

A. We ordinarily sign men with a certificate. We have to.

Trial Examiner Myers: You depend more on the certificate than on the selection of Mr. Meyers or Mr. Hand?

A. When you ship a man you can't tell anything about his qualifications.

Trial Examiner Myers: Do you give any preference when you hire a man to men who have been former Texas Company seamen?

A. Yes. If a man has been with you before and he is a good [44] man, you give him another opportunity.

Trial Examiner Myers: Any other questions?

Mr. Davis: I think I have just one question.

Redirect Examination

Q. (By Mr. Davis) Captain Roney, say a man is going to be discharged or is being considered for discharge, would it be usual or unusual for the captain of the ship to take that up with Mr. Hand in case they were going to dock at Port Arthur or would he just go ahead and use his own discretion on that?

A. I couldn't answer that. I would say he would say he would use his own discretion.

Q. But you don't know whether or not—

A. (Interrupting) I don't know positively, no.

Q. Of course the captains or the masters are

(Testimony of J. P. Roney.)

subject to the direction of Mr. Hand in case they are in Port Arthur here, is that right?

A. Yes.

Q. Let's say that the master of a ship didn't want to discharge a seaman and Mr. Hand did want him discharged, what would happen?

A. The man would remain aboard the ship.

Q. In other words, the captain has the final say?

A. Yes.

Q. Notwithstanding Mr. Hand's authority?

A. Yes. [45]

Q. And that is true even though the captain or master of the ship is subject to the authority and direction of Mr. Hand?

A. Yes. I can't imagine Mr. Hand requesting anybody to be discharged. The captain knows the men's qualifications. Mr. Hand wouldn't.

Q. But if he did do it——

A. (Interrupting) I don't know. There are too many if's there for me. Mr. Hand doesn't know anything about the men. Of course if Mr. Hand came right out and demanded the man's discharge, he being the captain's superior, probably the man would be discharged, but I can't imagine Mr. Hand doing it. Personally, I wouldn't do it and I can't imagine Mr. Hand doing it.

Q. In other words, if the captain wanted to hold his job and he was directed by Mr. Hand to fire him, he would go ahead and fire him, even though it was against his better judgment?

(Testimony of J. P. Roney.)

A. Yes, he might, yes, sir.

Mr. Davis: I believe that is all.

Recross Examination

Q. (By Mr. Van Dusen) Mr. Roney, Mr. Hand has no authority to discharge a captain, has he?

A. No.

Q. That rests with your office, isn't that so?

A. Yes. [46]

Q. And anything that Mr. Hand said to the captain would of course be in the way of a recommendation, isn't that so? A. Yes.

Q. And the captain is not compelled to discharge a man if he doesn't want to, even if Mr. Hand says so? A. No.

Mr. Van Dusen: That is all.

Trial Examiner Myers: Who assigns the masters to the various boats? A. I do.

Trial Examiner Myers: In New York?

A. Yes, sir.

Trial Examiner Myers: Is that all, Mr. Davis?

Mr. Davis: One more hypothetical question.

Redirect Examination

Q. (By Mr. Davis) Assuming that Mr. Hand here wanted somebody discharged and the captain on the ship didn't want to discharge that man, Mr. Hand takes the matter up with you, would you ordinarily accept the recommendation of Mr. Hand or that of the master of the ship?

(Testimony of J. P. Roney.)

A. The master, unless there were some very good reasons back and forth between them. Of course that is something else.

Mr. Davis: That is all.

Mr. Van Dusen: That is all. [47]

Trial Examiner Myers: Thank you, Mr. Roney.

(Witness excused.)

[Board's Exhibit No. 6 (Constitution of the National Maritime Union of America) and Board's Exhibit No. 7 (Standard Tanker Agreement of the National Maritime Union) introduced at the opening of proceedings on Tuesday September 13, 1938, are set out at the end of all of the testimony. See pages 1608 and 1676 of this printed record.] [48]

J. GORDON ROSEN

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination [124]

Trial Examiner Myers: Give your full name and address to the reporter.

A. J. Gordon Rosen, 202 Fifth Street, Port Arthur, Texas.

Q. (By Mr. Martin) Mr. Rosen, for the record, will you state your occupation?

A. Seaman.

(Testimony of J. Gordon Rosen.)

Q. How long have you been a seaman?

A. About ten years.

Q. Are you an able-bodied seaman?

A. Able-bodied seaman.

Q. How long have you been able-bodied seaman?

A. Well, I have discharges six years ago, definitely.

Q. That is, you have been able-bodied seaman at least six years?

A. I have.

Q. During the time you have been on the sea have you worked for a number of companies?

A. I have.

Q. About how many?

A. Ten or more.

Q. Have you worked for The Texas Company?

A. I have.

Q. When did you first work for The Texas Company?

A. On or about October 24, 1935.

Q. On what ship? [125]

A. SS "Nevada".

Q. When did you leave the SS "Nevada" at that time?

A. On or about February 2, 1936.

Q. When did you next ship on a Texas Company ship?

A. On or about June 30, 1937.

Q. On what ship?

A. SS "California".

Q. And when did you leave the SS "California"?

A. On or about September 18, 1937.

Q. And when did you next ship with The Texas Company?

A. On or about January 10, 1938.

Q. On what ship?

A. SS "Nevada".

(Testimony of J. Gordon Rosen.)

Q. And when did you leave the SS "Nevada" that time? A. On or about April 19, 1938.

Q. Have you ever worked for The Texas Company since the last date you stated?

A. Yes, I have.

Q. When?

A. I shipped on the SS "Washington" on or about June 1, 1938; was discharged on or about, that is, fired—I was not discharged; I was fired on or about July 14, 1938.

Q. Since that last date you mentioned have you worked for The Texas Company?

A. No, I have not. [126]

Q. Have you ever worked for The Texas Company except on the three ships you have mentioned at the four different times you mentioned?

A. No, I have not.

Q. Mr. Rosen, are you a member of the National Maritime Union? A. I am.

Q. When did you become a member?

A. Since its inception, on or about November 1, 1936; and an official member from 1937.

Q. To clarify the record, do I understand that you were a member of that group commonly known as the rank and file group who were active as early as late in 1936? A. I was.

Q. Which group became officially the National Maritime Union in May, 1937?

A. Yes, sir.

(Testimony of J. Gordon Rosen.)

Q. And you became a member in May, 1937, at its inception? A. Yes, sir.

Q. Now, Mr. Rosen, for the record, we shall return to your first sailing with the "Nevada" at a later time in the hearing. When you hired to ship on the SS "California" in June of 1937, did you sign articles? A. Yes, I did.

Q. Where did you sign those articles? [127]

A. In the captain's office.

Q. Who was captain of the SS "California"?

A. I believe his name is Peterson. I don't know his first name.

Q. When you signed articles, I take it you signed your name?

A. I produced my certificate of efficiency as able seaman, life boat ticket, and my certificate of identification. My pictures were on all three, with my name and address. [128]

Q. And your name? A. And address.

Q. You say it was in the captain's quarters. Who was present at the signing of those articles?

A. Myself and the captain.

Q. Anybody else?

A. Not that I remember.

Q. Do you remember whether on that occasion the captain called you by name?

A. He asked me where my address was, locally, and I said that was my permanent address, in Wisconsin.

Q. The address you gave the court reporter?

(Testimony of J. Gordon Rosen.)

A. No. That was my mother's address.

Q. Now, at the time you signed on the S. S. "California" were you bald-headed?

A. Yes. I have been that way for approximately six years.

Q. And when you signed on did you have your hat on or off?

A. Off. As a matter of respect to the captain, I always take my hat off in his office.

Q. Captain Peterson is not blind?

A. His eye sight has to be good, because the steamboat inspectors check up on that every so often, in order to get their ticket renewed, you see.

Trial Examiner Myers: That was not the question he asked you. [129]

A. He had very good eye sight.

Q. (By Mr. Martin) Or or about the first day that you were on the "California" did you have a discussion with the boatswain or the mate?

A. Yes. I asked the boatswain where the mate was, and told him I was due a leave. He pointed out the mate, Mr. Baldwin. I went up to see the mate, and I said: "I am the new A. B. sent down by the Seamen's Institute." He said: "Are you ready to turn to right away for inspection?" And I said: "Yes." And he said: "All right." And then he said: "Just a minute. There is one thing I want to tell you we don't allow on this ship, and that is getting drunk, missing watches, and we don't allow any agitation with the crew on this union business."

(Testimony of J. Gordon Rosen.)

Q. Who said that?

A. Mr. Baldwin, chief mate.

Q. The Chief mate? A. Yes, sir.

Q. For the purpose of the record, will you state the name of the boatswain please?

A. Leslie Thompson.

Q. Leslie or Lester? A. Leslie. [130]

Q. Do you remember anything else said at that conversation?

A. He just told me to go change my clothes and turn to that morning which I did, but something else happened that day, however.

Q. What happened that day?

A. Well, that same morning another sailor came aboard.

Q. Who was that? A. James Blasingame.

Q. Did you hear any conversations between James Blasingame and any officer of the Company on deck?

A. Not of any officer of the Company. I saw James Blasingame talking to the mate and later on he went back in the forecandle and the members of the deck crew were assembled there and James Blasingame asked us——

Mr. Van Dusen: Just a minute. I object, because this is not in the presence of any officer of the ship. It is hearsay; not binding on the respondent. He said James Blasingame went back and talked to the members of the crew.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: I overrule the objection.

Mr. Van Dusen: Take an exception.

A. (Continuing) James Blasingame said, "Did that mate say anything to you fellows when you came aboard the ship?" Another fellow by the name of Meyers——

Mr. Van Dusen: The same objection to what Meyers said. [131]

Trial Examiner Myers: Overruled.

A. (Continuing) He said, "Yes, the mate said something to me."

And Blasingame said, "The mate told me that he wouldn't stand for any drunkenness on this ship, missing watches, and any agitating the crew on union matters."

Myers said, "He told me the same thing," and another A.B. by the name of Vest said, "The mate told me the same thing."

Mr. Van Dusen: I object to that. It is the same thing.

Trial Examiner Myers: I understand that you have an objection to this whole line of testimony.

Mr. Van Dusen: Thank you.

Trial Examiner Myers: I overrule the objection and ask the reporter to please note an exception to my ruling.

Q. (By Mr. Martin) Mr. Rosen, you said that you were hired and that you shipped on the "California" on June 30th, 1937. During the month of

(Testimony of J. Gordon Rosen.)

July, 1937, and August, 1937, and the first week in September, 1937, did you engage in any union activities? A. Yes, I did.

Q. What did you do?

A. I discussed amongst the crew the advantages of the union, asked them to come up to the Union and join the Union, I went ashore and brought literature aboard the ship, Communi- [132] cations, the official organ of the Union, The Pilot, and I brought several of the members up to the Union Hall to join.

Q. Several new men who came aboard the ship?

A. Yes, sir.

Q. You invited them——

A. (Interrupting) To join the Union.

Q. And convince them that they should join the Union? A. Yes, I did.

Q. By peaceful means?

A. By peaceful means at all times.

Q. What, if anything, happened on September 7th, 1937?

A. The mate came up and tried to tell us that the over time pay we were to get for cleaning tanks was a certain amount. I told him that the difference between that amount and the Union scale was so greatly different it wasn't even a compromise.

Trial Examiner Myers: What is this mate's name?

A. The mate's name was Dave Rosen.

Q. (By Mr. Martin) Was he then the first mate?

(Testimony of J. Gordon Rosen.)

A. He was the regular chief mate.

Q. Mr. Baldwin was no longer chief mate?

A. Mr. Baldwin was relieving as chief mate. He later went as second mate.

Q. That is, when you boarded the boat Mr. Baldwin was the [133] mate, the chief mate?

A. He was.

Q. And at this time we are now referring to, Mr. Baldwin was the second mate and Dave Rosen was the first mate? A. That is right.

Q. Now, at the time you spoke to Chief Mate Rosen about wages for tank cleaning, were you a delegate speaking for the members of the crew?

A. At that time the condition on the ship did not allow us to have delegates.

Q. Either before or after the conversation with Chief Mate Rosen, did you participate in a meeting of the crew?

A. When I had this conversation with the mate I told him if that is all they could afford to give us, I said, "I am going to quit," and James Blasingame told him the same thing, "I am going to quit."

He didn't say anything. He informed the rest of the members of the crew the amount they would get. I went back aft and started packing up my clothes. The rest of the crew came back. I had a conversation. We had a meeting in the deck fore-castle. The rest of the crew was very much dissatisfied with the rate of pay they were supposed to get. I told them, "The only thing we can do then

(Testimony of J. Gordon Rosen.)

is to tell the Captain that if he don't pay us the amount we feel justified in asking, we are all going to quit." [134]

They said, "All right. You go up and tell the Captain that," which I did.

Q. Did they tell anybody else to go up and tell the Captain? A. James Blasingame.

Trial Examiner Myers: Did you go alone or did this other gentleman go with you?

A. We both went up at the same identical time.

Q. (By Mr. Martin) And you told that to the Captain?

A. Yes. On the way we met the mate.

Q. Was anybody with the Captain other than you two when you talked to him?

A. The mate, Dave Rosen, was in the Captain's office at that same time.

Q. Did you tell Captain Peters and Mate Dave Rosen at that time in the Captain's office that you were representing all the members of the crew as you spoke?

A. No, sir. He asked us——

Q. He asked you what?

A. "If the rest of the crew want the same thing you do."

I said, "Yes. If they don't get it, they told us they would quit."

Q. Did he understand from your words that you were saying that you were representing the rest of the crew in your conversations?

(Testimony of J. Gordon Rosen.)

A. That is one of the first things the Captain asked me. [135]

Q. If you were representing the members of the crew?

A. He asked me if the rest of the members of the crew wanted the same things I was asking for and I said, "Yes. We were sent up here to speak for the crew."

Q. You did say that? A. Yes.

Q. During that conversation, did the Captain or the mate ask you if you were elected?

A. They never did ask us.

Q. To represent the crew?

A. They didn't ask us if we were elected to represent the crew. [136]

Q. Did they ask you for any credentials showing that you were representing the crew?

A. No, sir.

Q. Did they ask you for any written credentials?

A. No, sir.

Q. Did either of them question your authority to represent the crew in that conversation?

A. Not directly.

Q. In any way? A. Yes.

Q. What did they say?

A. They told me that The Texas Company treated their employees in a fair manner and they gave them time off instead of overtime and they thought that the crew would be well satisfied with that.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Time off with pay?

Q. (By Mr. Martin) Time off with pay?

A. No, sir, time off without pay.

Q. Did either the captain or the mate ask you if you had authority from the home port of the ship or from the National Offices of the National Maritime Union to represent the men in this conversation?

A. They didn't care anything about the union on that ship.

Q. Their ears were closed to your remarks?

A. They were. [137]

Q. Did you try to make any remarks as to your authority from the home office? A. Yes, sir.

Q. From the home office?

A. From the National Maritime Union.

Q. Mr. Rosen, while you were on the "California" after September 7—I think you left the "California" on September 19—did you participate in any other union activities?

A. Yes, I did.

Q. What did you do?

A. There was another sailor on there by the name of Smith, an A. B., who made two trips. He joined the ship the second trip I was on there. The first trip he was on the 12:00 to 4:00 watch. We were very active in discussing the union amongst the rest of the members. The second trip he was placed on my watch, which was the 8:00 to 12:00 watch. Going north to Hudson River ports two of

(Testimony of J. Gordon Rosen.)

the A. B.'s quit; one of them's name was Buck O'Hara. He went up to the mate to get his money and the mate told him, "Give my regards to Moscow."

Then the boatswain asked this man Smith to go on the 12:00 to 4:00 watch.

Q. Which was your watch? A. No, sir.

Q. That was not your watch?

A. No, sir. The man Smith—this A. B., Smith said—— [138]

Q. (Interrupting) Just a minute. Was this in your presence?

A. In my presence and in the boatswain's presence, Leslie Thompson.

Q. And in the presence of any officer of the ship?

A. Well, the boatswain is an officer technically.

Mr. Van Dusen: I object. It is hearsay; not a conversation had in the presence of an officer of the ship.

Trial Examiner Myers: Overruled.

Mr. Van Dusen: What was the ruling?

Trial Examiner Myers: Overruled.

Mr. Van Dusen: Exception.

Trial Examiner Myers: Hereafter, Mr. Van Dusen, let him answer the question in full and you can move to strike out the answer.

Will you read the question and answer so far, Mr. Reporter?

(Testimony of J. Gordon Rosen.)

(The last four questions and answers were read.)

A. (Continuing) "If I go on the 12:00 to 4:00 watch I will be losing on the transaction. I don't want to go on the 12:00 to 4:00 watch with that union hating Baldwin.

Trial Examiner Myers: When he said, "Losing on the transaction," did he mean he would lose some pay?

A. He would lose time. You see there is a difference of two hours he would lose on that trip alone; besides the 12:00 to 4:00 watch is not considered as good as some of the other watches. [139]

Trial Examiner Myers: I am talking about pay. Would he lose any pay?

A. Not that I know of.

Trial Examiner Myers: But he would have to work two hours longer, is that it?

A. He would on that particular trip.

Q. (By Mr. Martin) Throughout this period that you were on the California—

A. (Interrupting) You asked me about my own activities?

Q. Yes.

A. Then I told the boatswain that I wouldn't—the boatswain asked me if I would take the 12:00 to 4:00 watch instead of Smith. I said, "No, I wouldn't take this watch because as a union man I felt that I had to stick up for a union brother. If he refused, I refused."

(Testimony of J. Gordon Rosen.)

Q. Was any officer of the ship present during that conversation?

A. No, but Leslie Thompson went up and notified the second mate.

Mr. Van Dusen: I move to strike out that testimony on the ground that no officer of the ship was present.

Trial Examiner Myers: I will grant the motion as to the last part of the sentence, but otherwise it is denied.

Q. (By Mr. Martin) After this conversation did you see Leslie Thompson going towards the mate?

[140]

A. Yes, sir.

Q. Did you hear him talking with the mate?

A. No, sir.

Q. At this conversation that you had with Smith did Thompson make any remarks?

A. He didn't say anything to either of us except to ask us if we would go on the 12:00 to 4:00 watch.

Q. He didn't say, "I am going to see the mate?"

A. No. He said, "I will have to tell the mate."

Q. Well, now, did he or did he not say that?

A. He said, "I will have to tell the mate."

Q. You heard him say that?

A. I heard him say that.

Q. At any time subsequent to this conversation did either the mate or Thompson make any statements to you with respect to it?

(Testimony of J. Gordon Rosen.)

A. That word "subsequent," I don't know——

Q. After the conversation?

A. After the conversation? No, they didn't say anything to me, but they fired Smith.

Mr. Van Dusen: I move to strike that out. That is a conclusion.

Mr. Davis: It is not a conclusion that he was fired. He didn't say they fired him for not working on that watch.

Trial Examiner Myers: Read the question and answer [141] again.

(The last question and answer were read.)

Trial Examiner Myers: I will strike out the words "but they fired Smith." Otherwise the motion is denied.

Q. (By Mr. Martin) How long did Smith remain on the ship after this conversation?

A. He got fired in Port Arthur as soon as he got back.

Mr. Van Dusen: The same motion.

Trial Examiner Myers: You mean to strike out?

Mr. Van Dusen: Yes.

Trial Examiner Myers: Motion granted.

Mr. Rosen, will you please answer the question. Don't add anything. The question is: How long.

A. The exact number of days?

Q. (By Mr. Martin) Approximately; as near as you can tell?

A. As far as I know approximately ten days.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: He finished the cruise is that it?

A. That particular trip, yes.

Trial Examiner Myers: And they came back to the port? A. Yes.

Q. (By Mr. Martin) Was Port Arthur the first port the ship touched at after that conversation?

A. It was the first port, yes, sir. [142]

Q. Mr. Rosen, I want to go back just a minute. You said that you told the captain when you went up to talk about the wages for tank cleaning; that is, when you and Blasingame went together; that you were representing the men in the crew. Did you inform him that you were representing not only union men but also non-union men?

A. I said that we were speaking for the whole deck force.

Q. And the whole deck force did include some non-union men along with the union men?

A. Yes, sir.

Q. You have mentioned that you had a number of conversations with the captain, the two first mates, and the boatswain during the time that you were on the "California" relating to what you thought were union activities. Do you remember any other conversations relating to union activities?

A. Yes, sir.

Q. When you were speaking on behalf of the crew?

A. Talking about union matters.

(Testimony of J. Gordon Rosen.)

Q. Relate that or those.

A. Well, I had a conversation with the third mate or third assistant engineer—the second assistant engineer and the relieving third assistant engineer and the radio operator.

Q. Four people?

A. Just discussing union matters.

Q. You mean just general discussions? [143]

A. Yes, sir.

Q. At different periods during the voyage?

A. Continually during the voyage.

Q. Continually? A. Yes.

Trial Examiner Myers: You mean during your free moments?

A. During my period when I was off watch.

Q. (By Mr. Martin) How many hours a day are you off watch? A. Normally eight.

Q. No. The number of hours you are off watch.

A. Normally four on and eight off.

Trial Examiner Myers: Sixteen, isn't it?

A. Yes, but not more than eight at one time, except in port.

Q. (By Mr. Martin) In other words, sixteen hours a day on the boat——

A. (Interrupting) Of the 24.

Q. (Continuing) When you don't have to work?

A. Yes, sir.

Q. During your period on the "California" did you have a nickname? A. Yes, sir.

Q. What was it? A. Curly.

(Testimony of J. Gordon Rosen.)

Q. In your conversations with the boatswain did he call you [144] Curly? A. Yes, sir.

Q. Did the third mate address you as Curly?

A. Not that I remember.

Q. Did he address you as Baldy? A. No.

Q. How did he address you? A. Rosen.

Q. And the second mate? A. Rosen.

Q. The first mate? A. Rosen.

Q. The captain? A. Rosen.

Q. While you were working on the "California" were you assigned any special duties that were not assigned to other able-bodied seamen aboard at that time? A. Yes, sir.

Q. Will you enumerate one of those?

A. One instance was when the radio halliard, the halliard for the radio antenna, was being replaced. The mate dragged out some nine stranded runner wire. He didn't even know where he had got it from. And he asked the boatswain to weave in a new halliard. He asked the boatswain if there was any of the A. B.'s that could splice wire. The boatswain said, "Yes, I [145] think Curly here can do a good job on it."

Q. Did you hear that conversation?

A. I did, yes, sir.

Q. You were present? A. Yes, sir.

Q. Go ahead.

A. Then I proceeded to splice the one eye here around the thimble, got it up, rigged it up, had to

(Testimony of J. Gordon Rosen.)

weave the other end through a pulley, and then splice the other end on deck to the notch on the gear rod, and by that time it was 12:00 o'clock and I was off watch or going to go off watch. The mate, Mr. Baldwin said, "Rosen, I would like you to come out this afternoon and finish this splicing. I wouldn't trust any of the other fellows back there to do it. If you do it I will give you time off when we get back to Port Arthur."

So I came back in the afternoon and finished the splicing. He was standing there with the third mate, Monroe, the radio operator, Brody, and the mate said, "That is a good job."

And the third mate said, "Yes, that is a pretty good job."

And the radio operator said, "That is going to last a long time."

And any time they had any splicing to do on any of the manila the boatswain always detailed me to do the splicing.

In dry dock immediately after we had the discussion with [146] the mate and the captain and received our additional compensation the boatswain told me to go out on the dock and shorten up that sling. "I don't think any of those fellows who are supposed to be A. B.'s on here know how to do that."

And still while in dry dock he told me to "Go up there and change the blocks on the wireless;" that the people in the dry dock said they couldn't

(Testimony of J. Gordon Rosen.)

do it and "we will have to do it. I want you to go up there and do it."

Q. Were you assigned any other special duties that were not assigned to the other able-bodied seamen? A. I don't remember of any.

Trial Examiner Myers: Did you do the special assignments?

A. Yes, sir. I went up, worked about all morning changing that over. It was quite complicated.

Q. (By Mr. Martin) Did you complete the task?

A. I did, satisfactorily.

Q. Did you hear any comments on that job?

A. No, sir.

Q. You were not complimented?

A. The mate was pretty mad at me then.

Q. For something else? A. Yes, sir.

Q. But despite the fact that he was mad, he asked you to do the job? A. Yes, sir. [147]

Q. And you did it? A. Yes, sir.

Trial Examiner Myers: Which mate was this?

A. The first mate, Dave Rosen.

Trial Examiner Myers: The first mate?

A. The regular first mate, yes, sir.

Q. (By Mr. Martin) During your sojourn, and that means your voyages, on the "California" was your work in any way criticized by any of the officers? A. Never.

Trial Examiner Myers: Adversely criticized you mean, don't you?

Mr. Martin: Adversely.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Was it ever adversely criticized?

A. I never heard one single bit of criticism of my work on the "California."

I would like to make a correction on that with reference to if I was ever given a special assignment. I was appointed temporary boatswain in Leslie Thompson's place in one instance. [148]

Trial Examiner Myers: Did the mate know that you were acting?

A. The mate gave me direct orders, the same as he would the boatswain, to turn the gang to and what he wanted done. The mate that was there at that time was Dave Rosen.

Trial Examiner Myers: Is he any relative of yours?

A. I hope not.

Trial Examiner Myers: Well, is he?

A. No, sir.

Q. (By Mr. Martin) Mr. Rosen, you have testified that you left the ship on or about December 19, 1937. Will you please relate any conversations you had with the captain, first, second or third mate or the boatswain at that time.

A. When we got into the Port Arthur dock the boatswain, Leslie Thompson, told me, "The mate told me you are fired."

Mr. Van Dusen: I move to strike it out. It is irrelevant, not binding on anybody.

Trial Examiner Myers: I will overrule it.

(Testimony of J. Gordon Rosen.)

A. (Continuing) "Your money is waiting for you."

I said, "I guess you know what I am getting fired for."

He said, "Yes. I feel pretty bad about it. I would quit myself. I ought to quit myself."

Q. (By Mr. Martin) Who said this?

A. Leslie Thompson.

Mr. Van Dusen: I move to strike it out. [149]
Trial Examiner Myers: Said it to you?

A. Said it to me.

Mr. Van Dusen: I move to strike that statement out.

Trial Examiner Myers: I overrule it.

Mr. Williams: Your Honor will recall the testimony of Mr. Roney as to the authority of a boatswain. He said he is simply a foreman and has no authority on the vessel and that it is frequently an A. B. who acts as boatswain.

Trial Examiner Myers: He also said that he would act somewhat like a foreman.

Mr. Williams: Like a foreman, and that he had no authority to hire or fire.

Trial Examiner Myers: That his duties compared with those of a foreman.

Mr. Williams: That he carried out orders as to the work.

Trial Examiner Myers: Yes, that is right.

Q. (By Mr. Martin) Did the boatswain, Leslie Thompson, say anything other than that?

(Testimony of J. Gordon Rosen.)

A. No, he didn't. He just said he was disgusted and said he felt like quitting himself.

Trial Examiner Myers: Did you ask Mr. Thompson who gave him the authority to fire you?

A. He told me. He said, "The mate said 'you are fired.'"

Q. (By Mr. Martin) Which mate?

A. He just said, "the mate." [150]

Q. Which mate is that?

A. Generally speaking of the mate is a reference to the chief mate.

Q. Then what did you do after that conversation?

A. Went down and started packing up. About one o'clock the second mate, Mr. Morgan, came down and said, "I have been looking all over for you. I want to give you your money."

So I went up. While Mr. Baldwin was making out my discharge I said, "What is the reason for me getting fired?"

He said, "The reason?" "Well, you know we don't want any agitating back there."

I took my discharge and left.

Trial Examiner Myers: What do you mean by "back there"? You have made that statement several times.

A. In sea terms that means back aft.

Trial Examiner Myers: Meaning your quarters?

A. Crew's quarters.

(Testimony of J. Gordon Rosen.)

Q. (By Mr. Martin) After your conversation with those two gentlemen, did you understand that you had been discharged?

A. There was nothing else I could infer.

Q. You say you then got your gear and left the boat?

A. I did.

Q. Is there anything to sign in a case like that?

A. Yes, sir, signed a voucher for my pay.

Q. And you did that? [151]

A. Yes, sir.

Q. What was your rate of pay on the SS "California"?

A. Eighty dollars a month.

Trial Examiner Myers: We will take a three minute recess while counsel for the Board confer with Union counsel.

(Thereupon a short recess was taken.)

Trial Examiner Myers: Are you ready gentlemen?

Q. (By Mr. Martin) Mr. Rosen, you have testified that in 1935 you worked on The Texas Company's SS "Nevada" from about October 22nd to about February 2nd of the following year, a period of roughly three months.

A. Yes, sir.

Q. When you left that ship, did you leave of your own desires?

A. Yes, sir. The captain even tried to hold me on there. So did the mate.

Q. How do you mean?

A. Well, the mate told me, "There is no need for you quitting here. You can go to Port Arthur with us." This was in New Orleans.

(Testimony of J. Gordon Rosen.)

I told him, "I want to get off here."

Q. For reasons of your own?

A. For reasons of my own. I went up and saw the captain, Captain Swanson. He said, "It is going to be hard to get a man in your place."

I said, "Well, I want to quit here." [152]

He said, "Well, I don't think I can give you your money unless you come to Port Arthur with us."

I said, "I will take a chance on that."

I left and went and packed up my clothes.

Q. Did he give you your money?

A. Well, after I packed up my clothes and was ready to go ashore the mate called me and told me, "The captain will give you your money."

Q. What was the mate's name?

A. Tranberg; Carl Tranberg.

Q. Then you testified that you reshipped on the SS "Nevada" on or about January 10, 1938, and served until on or about April 19, 1938?

A. Yes, sir.

Q. When you reentered the service of the boat at that time——

A. (Interrupting) Reentered the——

Q. (Continuing) When you got on the boat at that time——

A. (Interrupting) Which one? [153]

Q. The "Nevada". When you first entered it, when you were hired in January of 1938, were you welcomed on board?

(Testimony of J. Gordon Rosen.)

A. I was. The mate Tranberg was very pleased to see me. He said, "Hello. Where have you been?" All kinds of questions like that, and there were several witnesses sitting in his room when we had this conversation welcoming me back to the ship and they overheard it. One of them's name is Salas and the other one's name is Clark, Robert Clark. The mate told me, "You should have come back to The Texas Company before this."

I said, "Well, I was on different ships."

He said, "I expected to see you back here before now." He said, "How have you been doing? How are you doing? Where have you been keeping yourself," and so forth, and I answered.

I asked him if we were going to Spain; if the ship was.

He said, "Yes."

I said, "Are we going to get the \$50.00 bonus?"

He said, "Yes, we are."

Q. Who was that? A. Carl Tranberg.

Q. Did you have conversations with other officials of the boat?

A. I did. I had a conversation with Herman Hopper who was the second mate at that time. Previous to that he had been [154] the third mate and I had been on his watch.

Q. That was in 1935?

A. In 1935 and 1936.

He said, "Hello, where have you been?"

I told him I had been on different ships.

(Testimony of J. Gordon Rosen.)

He said, "Well, we are glad to see you back here." That is all he said.

I talked to the third assistant, Mr. Grunberg, and the second assistant—I don't recollect his name at the time. The first assistant—I don't recollect his name at the time—and they were questioning me about where I had been and everything that went on on the vessel since I had left and what ports they had made. He questioned me about my past history and so forth.

Q. While you were on the "Nevada" in 1935 and 1936 were you given any special assignments that were not given to other able-bodied seamen?

A. Yes, sir, I was. The mate asked me if I could splice lines, manila. I said, "Yes, I can." So he put me on that job at nights. That was my duty at night, to splice all the lines that were broken on each voyage. That was my special duty.

Q. And what are the duties of a normal, ordinary seaman on night shift?

A. You mean A. B.? I was an A. B. on there.

[155]

Q. An A. B.

A. Stand lookout, stand by, clean up the quarters back aft, and any other duties that the mate on watch considers necessary.

Q. But in your case when there was splicing to be done they would have you do it?

A. Yes, sir.

(Testimony of J. Gordon Rosen.)

Q. Was that true with respect to any other able-bodied seamen aboard?

A. No, sir, I can't remember of any.

Q. Do you remember any other instances aboard the "Nevada" at that time? A. Yes, sir, I do.

Q. (Continuing) When you were assigned special duties?

A. It wasn't exactly a special duty. We got into a bad storm leaving New York; called out about 5:00 o'clock in the morning. Barrels were adrift on the boat deck. We went back there and lashed them up. There was a big anchor weighing about five tons on the fore deck that was breaking loose. The mate told me, "Give me a hand to secure this," which we did; put a wire lashing around both ends of the anchor, put a strap around the base of the ventilators, secured it with turn buckles, tightened up the turn buckles every time the anchor would shift, and secured it in that manner. [156]

Q. Were there any remarks by the mate or any other officer?

A. Yes, sir. The first trip coming back to New Orleans after this blow, we got to New Orleans and two of the quartermasters got drunk. The mate told me, "You go up there and take the quartermaster's turn at the wheel."

I took the quartermaster's turn at the wheel from 8:00 o'clock that evening until 12:00 that night and from 8:00 o'clock the next morning until about 10:00 a. m. Then I went down, helped the mate and

(Testimony of J. Gordon Rosen.)

the other men in the crew put out a gangway, and the mate told me, "If you want a quartermaster's job it is yours."

I said, "No, I don't want that quartermaster's job. It is too monotonous. It is too easy. I get tired of it."

He said, "Well, I would rather have you on deck because you are better and handier on deck than these other men are."

I said, "All right. I will stand on deck as an A. B."

Mr. Pipkin: Is this the first trip with the "Nevada" or the second?

A. The first occasion I was on the "Nevada" for a period of about three months.

Mr. Pipkin: And that is the time you are talking about now?

A. Yes, sir.

Q. (By Mr. Martin) Did the mate make any comment about what kind of job you did in tightening down the anchor? [157]

A. Carl Tranberg?

Q. Yes. A. Yes, he did.

Q. What did he say?

A. He said, "Well, we done a good job on that."

Q. He was referring to your activities as well as to the activities of others?

A. Yes, sir, in securing the anchor.

Q. Did you engage in union activities when you boarded the "Nevada" during the second time in 1938?

A. Yes, sir, I did.

(Testimony of J. Gordon Rosen.)

Q. What did you do?

A. The first thing I did I brought some literature aboard from the union hall, official Pilots, leaflets from the union, and communications.

Q. Yes.

A. When we were out to sea about two days I asked who was the delegates on the ship. They notified me that C. Buckless was the deck delegate, Lee Holmes the engine delegate, and Sidney Cole the steward's department delegate. I went up to those men and asked them when we were going to have our first meeting. They said, "We will call one within the week," which they did. At the meeting we checked up on the number of union books aboard the ship and found out the ship was a hundred per cent union with the exception of one man. He [158] had an I. S. U. book.

Q. International Seamen's Union?

A. International Seamen's Union. I believe it was a reorganization committee that they were working under. Then at this first meeting we questioned the steward about the food on there. They couldn't make arrangements for the different food situations. We were going to go up to the captain and ask the captain if he couldn't arrange for better food and the steward said, "I don't think it will be necessary." The steward's name was Jansen at that time. He said, "I don't think it will be necessary. I will go up and tell the captain myself and I think we can straighten it out that way. It is

(Testimony of J. Gordon Rosen.)

better to be tactful at times to the captain," he said. "He is a pretty hard man to talk to," and we agreed upon that. We had a discussion about the bonus on the ship. It was brought up that if we made more than one port we would ask for a \$50.00 bonus per trip. It was agreed upon. I discussed the union with the third mate, Roger Kelly, on watch, because under this practice when there is rough weather and the man on lookout can't stay on the forecastle head he is permitted to go on the top bridge and Roger Kelly was up there. I was talking to him about union matters and he told me, "I ought to join the N. M. U. myself." He said, "I am getting \$50.00 bonus for each trip I make to Spain. The only one that got it for me was the N. M. U. members." [159]

I told him, "Yes, that is the thing you really should do. It is only right."

And he agreed he would join the union when he got back to Port Arthur.

Q. You mean from time to time you would talk about union matters with the third mate?

A. Yes, sir, from time to time.

Q. Did the "Nevada" go immediately to Spain the first trip?

A. Yes. I asked the mate when I came aboard the ship if we were sailing for Spain. He said he didn't know but that he would tell me. About 4:00 o'clock in the afternoon he said, "We are sailing tomorrow morning at 5:00 o'clock."

(Testimony of J. Gordon Rosen.)

So the next morning at 5:00 o'clock we sailed for Spain.

Q. How many ports in Spain did the ship anchor at? Name them, please.

A. We only anchored at one port, La Corona.

Q. Was that the first port at which the ship stopped in Spain?

A. It was the first port.

Q. Where else did the ship stop in Spain?

A. Bilboa and Pasjes.

Q. You say the boat anchored only at La Corona?

A. Yes, sir.

Q. Was it tied to the dock at Bilboa and at Pasjes?

A. It was [160]

Q. Now when the boat was in Bilboa did you contact the captain with respect to any question?

A. Yes, sir. We had a discussion amongst the crew about shore leave. The captain sent word back aft that there wouldn't be any shore leave. The crew seemed to feel that they were entitled to shore leave after 23 days at sea. They were sitting in the mess room and they said, "We will elect you to go up and see the captain to speak about this shore leave."

I said, "I will take a witness with me."

His name was W. W. Salas. We went up and on the way up we met the second mate, Herman Hopper. We asked him, "Did you hear anything about this shore leave?"

(Testimony of J. Gordon Rosen.)

He said, "No, but you fellows back aft ought to elect a committee to go up to see the captain about getting shore leave."

I said, "We are going to do that right now."

Q. Did you say, "We are the delegates"?

A. We were delegated.

Q. Did you tell him that?

A. Yes, sir. I said, "We are delegated to do that right now."

We had a little conversation with him and he said, "All right. I wish you luck."

We went up. Captain Swanson was sitting in a room drink- [161] ing beer with some Spanish official.

I said, "Captain Swanson, I understand we are not allowed any shore leave."

Captain Swanson said, "No, I can't give you fellows any shore leave. I understand that the port authorities will not permit it."

I said, "Is there any means that we can obtain shore leave?"

He said, "No."

I said, "Will you allow one of the members of the crew to go ashore to see the authorities to get shore leave?"

He said, "No." He said, "However, I will try to get shore leave for you."

I said, "We would like you to do that."

I went back aft and notified the other members of the crew. [162]

(Testimony of J. Gordon Rosen.)

Q. When you first talked with the Captain, did you say "we are speaking for ourselves only"?

A. No, sir.

Q. What did you say?

A. I said, "The crew elected us to ask you whether we could get shore leave."

Q. Did the Captain ask you for your credentials? A. No, sir.

Q. Didn't he question your authority to represent the men?

A. No, sir. In fact there was a letter posted on that ship giving the crew the right to elect representatives to speak for and bargain for them from J. P. Roney, general manager.

Q. And then was word sent back later on this issue? A. Yes.

Q. What word?

A. The Captain sent the quartermaster back aft to tell us that shore leave had been granted and we would be allowed to make a draw. This was about six-thirty at night.

Q. By "draw", you mean what?

A. That is the technical definition I believe of a certain amount of money that you are allowed or have the right to ask for.

Q. Were all the men allowed to go ashore at once?

A. Yes, sir, we were all allowed permission except the men on watch. That is understood. [163]

(Testimony of J. Gordon Rosen.)

Q. Then you have testified that the boat went from Balboa to Pasjes? A. It did.

Q. Did you contact the Captain there?

A. The Captain notified us again that no shore leave would be allowed. Some of the members of the crew were pretty anxious to go ashore there and they said, "Will you go up and talk to him again," which I did.

He said, "No——

Trial Examiner Myers: Did you go alone this time?

A. I went alone that time, yes.

He said, "No permission will be granted you unless we have authorization of the military authorities." He said, "Some of the crew got drunk in Balboa."

I said, "I didn't know about——

He said, "Some of the crew got drunk and created a disturbance in Balboa."

I said, "I had never heard of this before".

"Well," he said, "I will have to get permission before anybody goes ashore."

Q. Did you tell the Captain that you were speaking solely for yourself?

A. He recognized me as speaking for the crew.

Mr. Pipkin: Just for our information, how far is this second port from Balboa? [164]

A. It was about twelve hours' to fifteen hours' run. I haven't the exact statistics.

(Testimony of J. Gordon Rosen.)

Mr. Pipkin: You would reach it within the same day——

A. (Interrupting) The same day.

Mr. Pipkin: (Continuing) That you weighed anchor?

A. To the best of my memory we left Balboa one evening and we arrived in Pasjes the next evening about four o'clock.

Q. (By Mr. Martin) Mr. Rosen, a few moments ago you made some mention of a discussion over a bonus for the trip to Spain?

A. Yes, sir.

Q. Did you have any discussions with any officers of the ship in regard to this bonus?

A. Yes, sir.

Q. Or in regard to this question?

A. Yes, sir.

Q. Will you tell us about that?

A. I asked the mate when I joined the vessel, Mr. Carl Tranberg, I said, "Are we going to get a bonus for this trip?"

He said, "Yes, we are going to get a bonus."

Q. Now, did you tell the mate at that time that you were speaking solely for yourself?

A. I had just joined the vessel at that time. I was speaking solely for myself. [165]

Q. Yes.

A. Then I spoke to Roger Kelly about the bonus and he said that we would get the bonus also, and then is when we had the conversation about he felt

(Testimony of J. Gordon Rosen.)

that he ought to join the N. M. U. because they had got him the fifty dollar bonus. Then I had another conversation about the bonus with Mr. C. L. Hand.

Q. When was this?

A. When we arrived back from Spain on or about February—the last day of February; one of the last two days of February. The crew had a meeting——

Mr. Pipkin: In what year, Mr. Rosen?

A. 1938.

The crew had a meeting and it was voted that I go up with delegate Buckless and Lee Holmes, and ask Captain Hand whether we were not entitled to receive fifty dollars per port.

I saw Captain Hand amidship. I went up with Lee Holmes and Buckless. I said, "Captain Hand, I would like to speak to you a minute."

He was busy speaking to the second assistant engineer.

Q. That is, Mr. Hand had come aboard the ship when it was in port?

A. Just as soon as it docked Captain Hand came aboard the ship. [166]

I said, "Captain Hand, we would like to see you about this bonus question. Do we get \$50.00 per port or for the trip?"

He said we would get fifty dollars a trip.

I said, "Well, union companies and union ships pay \$50.00 per port."

(Testimony of J. Gordon Rosen.)

He said, "Our understanding is that we are only to pay \$50.00 for the trip."

I said, "The Maritime Commission I believe recognizes the bonus as legitimate."

Captain Hand said, "We are not out to cheat anybody. Don't think that for a minute."

I said, "No, I don't think The Texas Company is, but we would like to get this matter straight. If the Maritime Commission sets this precedent I think The Texas Company ought to pay it."

He said, "If the Maritime Commission sets this precedent The Texas Company will pay it."

I said, "If I can get official word or notice from the Maritime Commission, will you pay this?"

He said, "Yes, if the Maritime Commission hands down its ruling."

I said, "Is there a Maritime Commission officer in Port Arthur?"

He said, "No." He said, "By the way, what is your [167] name?" which I told him. Then he pointed to Buckless and he said, "What is your name?"

Buckless told him.

He said, "What is your name?" to Lee Holmes.

Lee Holmes told him.

He said, "What is your rating?"

I said, "I am an A. B."

He said, "What are you?" to Buckless.

Buckless said, "I am the boatswain."

(Testimony of J. Gordon Rosen.)

He said to Lee Holmes, "What is your rating?"

Lee Holmes said, "Pumpman."

He said, "Well, you know you fellows got a raise in pay of five dollars?" "Most of them" I think he said. He said, "You know you fellows got a raise in pay this trip?"

I said then, "If we get a letter from the Maritime Commission you will recognize it?"

And he said, "Yes," and he left.

Trial Examiner Myers: How much did you get?

A. Fifty dollars only.

Q. (By Mr. Martin) When you first spoke to Captain Hand, did you tell him that you were speaking for the three of you only?

A. No, sir.

Q. What did you say? [168]

A. I said, "The crew elected us to come up here to ask about this question."

Q. Were you wearing a hat?

A. I was wearing a white cap.

Q. You were wearing a cap at that time?

A. Yes.

Q. Did you take it off while you were talking to Captain Hand?

A. I don't remember whether I did, or not.

Q. Did you do all the speaking for the three of you?

A. Pretty much. About ninety per cent of it.

Q. The others said a few things?

(Testimony of J. Gordon Rosen.)

A. They verified what I had said. Buckless said, "Yes, we would like to get this straightened out," and so forth.

Q. You didn't leave the boat either from your own desires, or the Company's desires at the end of this trip?

A. At the end of this particular trip from Spain?

Q. Yes.

A. No. There was a Commissioner there signed us off and gave us a foreign discharge and we were put on coastwise articles.

Q. Then you made another trip?

A. Several more.

Trial Examiner Myers: Did you ever get a letter from the Maritime Commission? [169]

A. I didn't personally receive any letter from the Maritime Commission, no, sir.

Trial Examiner Myers: Did you ever apply for it?

A. Yes, sir, we wrote to the Maritime Commission.

Trial Examiner Myers: And you never got an answer?

A. I didn't receive an answer myself, no.

Q. (By Mr. Martin) About what was the date of the end of the foreign trip and the beginning of the coastwise trips?

A. About the second to the last day in February.

(Testimony of J. Gordon Rosen.)

Q. Near the end of February?

A. Right close to the end of February.

Q. Now, you testified, Mr. Rosen, that you left the boat on or about April 19, 1938?

A. Yes, sir.

Q. Did you engage in any Union activities between March 1st and April 19, 1938?

A. Yes.

Q. Describe them.

A. We had a discussion about these back wages. The officers received back wages retroactive from the time the wage scale had been raised, but the crew did not. We were notified first that we would receive it and then notified later that we would not. So the deck delegate, Buckless, went up and asked the Captain why we didn't receive this back pay. According to Buckless, the Captain had some kind [170] of a letter to the effect that we were not supposed to get it. However, at a meeting we held I voted that we send a telegram to J. P. Roney requesting information as to why this was not paid as it was contrary to the general policy of The Texas Company.

Mr. Van Dusen: I move that that portion about what Buckless said be stricken on the ground that it is hearsay.

Trial Examiner Myers: Will you read the question again, Mr. Reporter. I think you are too late with your objection, Mr. Van Dusen.

(The last two questions and answers were read)

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: I will strike it all out except the word "yes" on the grounds that it is not responsive.

Q. (By Mr. Martin) Did you have any Union meetings?

A. Regular Union meetings on the Nevada.

Q. Were you active in them?

A. Yes, sir. I was elected chairman, I was elected secretary, I was elected as special spokesman for the crew.

Q. How often would you have meetings?

A. On every trip we would have at least one in each direction on a coastwise trip, and we had a number of them going to Spain and returning from Spain.

Trial Examiner Myers: You only made one trip to Spain, is that right?

A. Only one trip to Spain. [171]

Q. (By Mr. Martin) Were you with delegate Buckless when he had a conversation with the Captain with respect to retroactive wages?

A. No, sir, I was not.

Q. Was there any discussion with respect to overtime? A. Yes, plenty of it.

Q. Tell us about that.

A. One discussion on overtime was at a place called Cat Island. This was on or about the return from the first trip to New Haven.

Q. After the Spanish trip?

A. Yes, sir. On or about March 14th, 1938.

(Testimony of J. Gordon Rosen.)

Q. Did you have a discussion at that time?

A. Yes, sir. The mate approached me and said, "You have a certain number of hours overtime coming."

I said, "What about the Cat Island overtime?"

He said, "I don't know anything about that."

I said, "Well, we have it coming. We are justified in asking for it."

He said, "You will have to see the Captain about that."

He turned to Buckless standing in the same place and he told Buckless and Buckless told him the same thing; that we had the Cat Island overtime coming. The mate slammed his overtime book shut and walked away. Then he came back; we were working back aft; and told Buckless in [172] my presence that "All you fellows that want that Cat Island overtime come up on the bridge." [173]

Q. The mate said that? A. Yes, sir.

Q. Who was speaking? A. Carl Tranberg.

Q. Speaking to whom? A. To Buckless.

Q. Whom did he say to come up on the bridge?

A. All the fellows that want that Cat Island overtime.

Q. And whom did he say gave him those instructions?

A. The Captain, Captain Swanson. Then Buckless turned to us and said, "What are we going to do about it?"

(Testimony of J. Gordon Rosen.)

We said, "We will have a meeting right now," which we had. We had a meeting and decided that the delegates, myself and Lee Arnold, would be delegated to speak for the crew to ask for this overtime and the rest of the crew would be there to back us up.

Q. And you said the crew was 100 per cent unionized, members of the N. M. U.?

A. Yes, sir, they were except for one member.

The crew, with Buckless, myself, and Lee Arnold in the lead, marched up on the boat deck almost in a body. Buckless opened the conversation.

He said, "Captain, we would like to get this overtime question straight."

They had a conversation back and forth between them. The [174] captain seemed to be inclined that we were out at sea at Cat Island and he wasn't going to pay the overtime. He said, "I am not going to pay that overtime."

I said, "Captain, your own working rules which The Texas Company posts calls for overtime at Cat Island."

The captain said, "I am not going to pay this overtime."

Then he brought out the fact that we were supposed to be seven miles at sea at Cat Island and I said, "It doesn't make any difference where we were. The working rules are still in effect."

The captain said, "I am not going to pay it" again. He said, "You fellows are not doing any-

(Testimony of J. Gordon Rosen.)

thing for me and I am not going to do anything for you." He said, "You are demanding this and you are going to go too far."

Buckless said, "We are not demanding anything. We are just asking for what we have coming to us."

The captain didn't make any answer to that and Lee Arnold said, "I see that we are not getting anywhere."

Then I believe it was Lee Arnold said, "If we go to Captain Hand and he says to pay it, will you pay it?"

Captain Swanson said, "If Captain Hand says to pay it, I will pay it."

Then on the way back, going up to Port Neches, the captain stopped us and said, "I have orders to pay this overtime, but the next time you go out to Cat Island you are going to work; [175] paint, sooging; do anything else on Sunday afternoons."

We didn't have any discussion on that, but in the salon the captain refused to pay Buckless his overtime.

Q. When you went up to the captain then you said there were three of you?

A. The whole crew that was off watch was up there and some on watch and Buckless, myself, Lee Arnold, and Lee Holmes were in the lead as elected spokesmen of the crew.

Q. Did you inform the captain of the fact that you were spokesmen? A. Buckless did.

Q. Buckless informed him? A. Yes, sir.

(Testimony of J. Gordon Rosen.)

Q. Now you didn't leave the ship at the conclusion of this first trip to New Haven?

A. No, sir.

Q. That is, after the trip to Spain?

A. No, sir.

Q. Were any new men employed to work on the ship at the beginning of the next trip?

A. Yes, sir, there were.

Q. How many? In your department, how many?

A. Please ask that question again, the previous question. You say the return trip from Spain?

Q. The next trip after the New Haven trip?

[176]

A. I don't get that quite clear.

Trial Examiner Myers: Will you read the question, please?

(The testimony was read.)

A. That is what I would like to know. What do you mean? At the conclusion of the trip from Spain or at the conclusion of the trip to New Haven, to Cat Island, to Port Neches?

Q. (By Mr. Martin) Yes, at the conclusion of that last trip.

A. Yes, there were several hired. There was one quartermaster hired, an ordinary seaman, and one A. B.

Q. Any others?

A. Not that I recollect at this time in our department.

Q. Were those men members of any union?

(Testimony of J. Gordon Rosen.)

A. Yes, sir, they were members. The quarter-master was a member of the National Maritime Union. Let's see? I am trying to recollect the A. B.'s name that was replaced at this particular time. I can't recollect that A. B.'s name, so I couldn't swear that he was a member of the union or not.

Trial Examiner Myers: What about the other fellow?

A. And the ordinary seaman was not a member of the union.

Q. (By Mr. Martin) Did you talk to him about the union?

A. I did. His name was P. K. Guy. He joined the union on the trip to Marcus Hook and Claymont, Delaware.

Q. Did you have some shore leave between the two trips we are talking about? [177]

A. Yes, sir.

Q. After the New Haven trip and before the Marcus Hook trip?

A. Yes, sir.

Q. Did you engage in any union activities on shore?

A. Yes, sir, I went up to the union hall and discussed the question of the bonus with the union agent. He seemed to be inclined that in as much as the other companies were paying \$50.00 per port we were entitled to it. [177-A]

Mr. Van Dusen: I move to strike what took place on shore and what the inclination of the union men was.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: I will strike out all the answer there except the part that he discussed with the union official, the bonus. What he discussed is irresponsible to the question.

Mr. Davis: I think if for no other purpose it serves to corroborate the testimony of Mr. Ames given yesterday. He was asked the question, I believe by Mr. Van Dusen, as to how he knew that particular men were active on the ship and he said by reason of the fact that those men came in to him and made reports, and I think this testimony should stand.

Trial Examiner Myers: Well, it is not responsive to the question. That is the only reason why I struck it out. The question was Was he engaging in any union activities. Instead of saying "yes," he goes along with a long, lengthy, detailed statement.

Mr. Davis: All right.

Q. (By Mr. Davis) What union activity were you engaging in on shore?

A. I went up to the Union Hall and contacted the union agent along with Buckless and Lee Holmes and we asked the agent at the Union Hall about this bonus question. The agent, Arthur Thomas, said, "You fellows are entitled to the \$50.00 per port bonus. However, it is going to be a question of you men sacri- [178] ficing your jobs in order to collect it."

(Testimony of J. Gordon Rosen.)

Mr. Williams: Now, we object to that. There was no officer of the company present when that statement was made.

Trial Examiner Myers: I didn't hear your objection, Mr. Williams.

Mr. Williams: The objection is that no officer of the company or of the ship was present when Arthur Thomas made that statement.

Trial Examiner Myers: I will sustain that objection.

Mr. Davis: Well, I don't think that testimony can bind the company. Certainly, if a union official said, "It is going to mean your job," that doesn't necessarily mean it is going to mean their jobs and we don't offer it for the purpose of binding the company at this point. It is simply offered to show the union activity of this man while ashore and to corroborate the testimony of Mr. Ames given yesterday that these men were active in union affairs.

Mr. Van Dusen: Well, I would like to move to strike it out on still another ground, that it is irrelevant and immaterial.

Trial Examiner Myers: I have ruled on the objection and I stand by the ruling.

Mr. Davis: I thought you ruled it out on the grounds that it was not responsive.

Trial Examiner Myers: Well, he is bringing in a lot of [179] irrelevant things. There is no use going into that. I have let him go so far as to say he had union activities, that he went to the Union

(Testimony of J. Gordon Rosen.)

Hall, that he presented his grievance to the union officials, but what the union officials said to him has no bearing whatsoever on the issues involved.

Mr. Davis: All right.

Q. (By Mr. Martin) Mr. Rosen, was Mr. Ames present? A. I believe he was.

Q. Did you have any discussion with him?

A. Yes, he asked me——

Q. (Interrupting) Did you do any writing with respect to the union?

A. Yes, I did. I wrote a letter to Captain Roney.

Q. At this time? A. On this ship.

Q. While you were ashore?

A. On the ship.

Q. Not while you were ashore?

A. No, sir.

Q. Did you draft any circular letters?

A. Not at this particular time except one letter we had from the ship to be distributed through the Union Hall as coming from the SS "Nevada".

Q. Who wrote that letter?

A. I did; most of it. [180]

Q. When?

A. On the SS "Nevada". It was read to the crew and they concurred in it.

Q. Without going into the contents, just tell us what the letter was about?

A. The letter was about the fact that the N. M. U. had been certified as the collective bargaining

(Testimony of J. Gordon Rosen.)

agency for The Texas Company and inasmuch as we felt that due to the figures given by the N. L. R. B. we had the largest majority of any union represented and we had the right to request the company and the other ships to see that eighty-five per cent of former employees who were N. M. U. men were rehired and that the company will have to pay to the Standard Tankers Agreement and also that passes should be issued to agents and delegates.

Mr. Williams: For what purpose is this testimony going in? Right here I understand that the N. M. U. has been certified as the bargaining agency for the employees of The Texas Company, but I don't understand that there is any contract.

Mr. Martin: The purpose of this testimony is to show that when the crew of the SS "Nevada" was about 100 per cent organized they did, under the name of the SS "Nevada", send a letter to all men, members of the union working on Texas Company ships. This letter as I understand from Mr. Rosen was distributed through the Union Halls and doubtless found [181] its way into many, if not all, of The Texas Company ships. I suggest that that fact alone is enough to justify admitting the letter, even though perhaps it can't be proved that a copy of this letter was seen on the captain's desk or on the mate's desk. I suggest that a letter signed by the crew at the bottom was circulated and that is enough to justify this testimony, because it was in the "Nevada", which we are talking about, as well as in

(Testimony of J. Gordon Rosen.)

other ships that there were discharges for union activities.

Mr. Williams: Mr. Examiner, it being admitted that there is no contract between the N. M. U. and the ships of The Texas Company, unless it be proven that this request reached the officers of the company, then it has no place in this record. [182]

Mr. Martin: Mr. Examiner, we are not interested in the merits of what the letter says. The letter could be almost a blank and so long as it was making efforts on behalf of the Union, still I would think it would be admissable and relevant.

Trial Examiner Myers: I will overrule your objections.

Mr. Williams: Not our exceptions.

Q. (By Mr. Martin) Is this the letter?

A. That is the letter.

Mr. Martin: I ask the reporter to give this letter an exhibit number.

Trial Examiner Myers: It will be No. 8.

(Thereupon the instrument above referred to was marked as Board's Exhibit No. 8 for identification.)

Mr. Pipkin: I want to add that respondent further objects because it is not material to anything charged in this complaint. The complaint is for discrimination.

Trial Examiner Myers: Well, what are your objections now? To the testimony?

(Testimony of J. Gordon Rosen.)

Mr. Pipkin: To the introduction of that letter.

Trial Examiner Myers: He has not offered it so far. It has been marked for identification.

Mr. Pipkin: Well, that objection will be raised when it is offered. I will renew it.

Trial Examiner Myers: All right.

Mr. Williams: Now, we object to this—— [183]

Trial Examiner Myers: Well, it has not been offered yet, Judge.

Mr. Martin: Mr. Examiner, I offer what has been marked for identification as Exhibit No. 8, this being the letter that Mr. Rosen has referred to in his testimony and it being entitled "An open letter to all Texas Company ships from the crew of the SS 'Nevada'," the opening phrase being——

Trial Examiner Myers: Don't read the contents.

Mr. Martin: All right. The letter being signed "Fraternially yours, crew, SS 'Nevada'," and I offer that to prove that the crew of the SS "Nevada" and the union leaders in that crew were active in union activities and that, it being a circular letter, the knowledge of the militancy of this group of men might more easily find its way to the company.

Trial Examiner Myers: Any objection to the letter going in evidence, gentlemen?

Mr. Williams: We object to it on the ground that it is simply an inter-communication between members of the unions themselves. It is not addressed to the company. It is not addressed to the

(Testimony of J. Gordon Rosen.)

master of any ship. There is no evidence that it was ever received by the officers of the company, ever received by the master of any ship. It shows on its face that it is militant propaganda for the sole purpose of promoting enthusiasm among the members of the union and it is not pertinent to any inquiry in this case. If that letter is admissible we will have to admit every communication between [184] branches in this Union, by men in the Union to each other, and from men in the Union to the branches, home office, and so forth. We would pile a record up here that would be as big as this court house.

Mr. Martin: I feel, Mr. Examiner, that the fact that it is signed by the crew of the SS "Nevada" is enough to justify it going in evidence in this hearing, a number of the men discharged having worked on the SS "Nevada".

Trial Examiner Myers: I will overrule the objection and ask the reporter to please mark Board's Exhibit No. 8 for identification in evidence as Board's Exhibit No. 8 and to note an exception to the ruling for the respondent.

(The document heretofore marked Board's Exhibit No. 8 for identification, was received in evidence.)

(Testimony of J. Gordon Rosen.)

BOARD'S EXHIBIT NO. 8

AN OPEN LETTER TO ALL TEXAS CO.
SHIPS FROM THE CREW OF THE S. S.
NEVADA

Dear Brothers:--

We believe that the time has come to allow no new men to ship on Texas Co. ships without N. M. U. Books!

On the face of this, it might seem that we are dictating a militant policy of action, but the fact remains that 90% of all bona fide Seamen belong to the N. M. U. and every effort should be made to make the Texas Co. 100% N. M. U. if only for the following reasons.

There are experienced seamen on the beach today who have worked for the Texas Co. in the past; yet the backwoods are being combed for green men to go aboard ship! The next time you hit the beach, one of these green men will be all set to take your job.

Green men are willing to accept any standard and any wage for the sake of a job. The Texas Co. is today falling far below the standards set by N. M. U. men on fully organized ships. **EVERY UNORGANIZED MAN ON YOUR SHIP IS ENDANGERING YOUR CHANCE TO MAINTAIN A FAIR SCALE OF WAGES AND WORKING CONDITIONS IN THE TEXAS COMPANY . . .**

It is the unwritten code of the sea to teach the

(Testimony of J. Gordon Rosen.)

beginner the right way to do the job. Breaking in new men throws a double load on your shoulders. You not only have your own job to take care of, but spend additional time and energy showing him how to do his job right.

Unorganized men do not realize the value of co-operation with union men on the ship thereby doubling the danger of accidents. New men have to be watched closely both for their safety and for yours!

It has been proven in the past on this ship and all other ships that unorganized men are anti-social at all times.

Unorganized men are the reason for the existence of crimp joint Scratch Houses, and back door shipping, jobs bought and sold, Private shipping lists, Black Ball, lists, and other types of favoritism. The above type of shipping are a disgrace to American Seamen and the American Merchant Marine. We maintain that the only fair and impartial method of shipping is the rotary system as practiced by the N. M. U.

The LaFollette Senate investigation Committee brought out the fact that the Major Oil Companies have Pinkerton men and other types of anti-labor men aboard ships. You might have one of these jolly lads aboard your ship. The above types of shipping are a good method to place spies aboard your ship.

(Testimony of J. Gordon Rosen.)

After several months of effort in breaking in a new man, if he is still unorganized, it is more that reasonable to expect that he will become a potential strikebreaker, should the occasion arise.

We therefore request that you bring this matter up at your next union meeting and give it your earnest attention for upon your action or lack of action on this matter at this time will determine whether Texas Company ships are to keep abreast of other organized ships in maintaining union wages and working conditions.

Fraternally Yours

CREW S. S. NEVADA

P. S. If your crew endorses this letter please notify the NMU hall in Port Arthur.

Q. (By Mr. Martin) Mr. Rosen, do I understand that this letter was distributed?

A. Yes, when I came aboard the "Washington" it was hanging in the forecastle of that ship.

Q. You saw it there?

A. Yes, sir, and others saw it there.

Q. The forecastle mess room?

A. Yes, sir.

Q. Who eats in the forecastle mess room?

A. The whole crew.

Q. Including?

(Testimony of J. Gordon Rosen.)

A. The engineers come up there for night lunch at night. [185]

Q. And does one drink coffee there?

A. Yes.

Q. Who does?

A. Anybody that wants to. The captain can drink there if he wants to.

Trial Examiner Myers: Did you ever see the captain drink coffee in there?

A. No, sir, but he makes his rounds and he looks in there all the time.

Q. (By Mr. Martin) You have seen the captain in there? A. Yes, sir, I have.

Q. Did you see that captain in there while that message was hanging on the bulletin board?

A. Yes, sir, I did.

Q. Is that captain blind?

A. He has very good eye sight.

Q. Did he understand that this letter was distributed to men that worked on other ships of The Texas Company other than the SS "Washington"?

A. Yes, sir, we had several responses. The other men came up to the hall and asked us what we wanted to do about that letter from the "Nevada" and also in the Pilot, our official organ, was printed minutes from Texas Company's ships referring to the open letter from the SS "Nevada".

Q. On the SS "Washington", did you see any other members of the licensed personnel in that

(Testimony of J. Gordon Rosen.)

mess room while that letter [186] was hanging on the bulletin board?

A. Yes, sir, I saw the chief engineer, the second assistant engineer, the chief mate, and the radio operator.

Q. Are any of them blind?

A. They have very good eye sight.

Mr. Williams: I suggest, Mr. Examiner, we ought to know whether they can also read and write.

Trial Examiner Myers: Well, the question is whether the witness saw these people read the letter. He has not said that he saw any of the people read the letter.

Mr. Williams: No, he has not said that.

A. Yes, I actually saw one person in particular read that, which was the first mate on the SS "Washington". His name is Ruse. I also saw the chief engineer read it. He questioned us about it later.

Trial Examiner Myers: What is the chief engineer's name?

A. His name is Nathaniel Dilbert.

Q. (By Mr. Martin) Did he question you about it?

A. He asked Buckless in my presence. [187]

Q. Now on or about April 18, 1938, do you remember a discussion with boatswain Buckless?

A. A discussion with the boatswain?

Q. Yes.

(Testimony of J. Gordon Rosen.)

A. Yes. He was fired that day.

Q. He told you so?

A. I heard the captain tell him he was fired.

Q. You heard the captain tell him he was fired?

A. Yes. We were all lined up to get our money. The captain had a discussion with Buckless. He said, "You are fired."

Buckless wanted to know why. He said something about some beer. I don't know what the exact words were.

Q. Try and remember what the words were.

A. He said, "I told you not to bring that beer aboard."

Buckless said, "I didn't bring any beer aboard."

The captain said, "You did and you are fired."

Then I went looking for some of the other members of the crew to see what they were going to do about Buckless. We met him as he came down the ladder from the salon mess room.

Trial Examiner Myers: Whom do you mean? Buckless or the captain?

A. Buckless. Lee Arnold and myself asked Buckless, "Are you fired?"

He said, "Yes."

We asked the other members of the crew what they thought [188] about it and they said, "Well, you will have to see the mate."

So we went over and talked to the mate, Carl Tranberg.

(Testimony of J. Gordon Rosen.)

Q. (By Mr. Martin) Who went?

A. Arnold and myself as spokesmen of the crew.

Trial Examiner Myers: Did you ask Buckless if he ever brought any beer on board?

A. I never knew he brought any beer on board.

Trial Examiner Myers: Well, did you ask him?

A. No.

Trial Examiner Myers: Go ahead. You went to the third mate and what happened?

A. To the chief mate, Carl Tranberg.

Trial Examiner Myers: All right. To the chief mate.

A. Lee Arnold said, "I understand Buckless got fired."

Carl Tranberg was very much surprised. He said, "Who fired him?"

Lee Arnold said, "The captain did."

I said, "What is the reason for firing Buckless?"

Tranberg said, "I didn't know he was fired."

Buckless was standing there. He said, "I am fired."

So the mate was very much surprised about it; wouldn't give us any satisfaction and we walked away and we had a discussion of what we should do about it. Some of the members wanted to try to have a group go up and see Captain Hand. I said, "No. Under the circumstances I feel we should file [189] charges with the Labor Board."

This was agreed upon. I went up that night, secured members of the crew on that ship, we made

(Testimony of J. Gordon Rosen.)

out affidavits of Mr. Buckless' good record on that ship, his union activities, and so forth.

Q. (By Mr. Martin) Were you instructed to report back to work or that you too were dismissed?

A. No, sir. I was instructed to go to work and at 2:00 o'clock in the afternoon the mate told me I could have the rest of the day off and to come back in the morning at 8:00 o'clock; they might need me; he thought they were going to shift the ship.

Q. And did you report back the next morning?

A. I did, promptly at 8:00 o'clock.

Q. Did any new employees come aboard at the beginning of the next trip?

A. Yes, the same day Buckless was fired they called up for some new employees. They arrived there that evening or early the next morning.

Q. Did you speak with any of them?

A. I spoke with two of them.

Q. Do you remember their names?

A. One of them was Leo Herman, an A. B. The other one was a young boy. I couldn't find out his name; an ordinary seaman. [190]

Q. Will you tell us about that conversation with Herman?

A. Yes. I talked to Herman before breakfast. I asked him if he had a union book.

He said, "Yes." He said, "I have an I. S. U. book."

(Testimony of J. Gordon Rosen.)

I said, "Do you know that The Texas Company has been certified by the N. L. R. B. as being an N. M. U. company?"

He said, "Well, I have an I. S. U. book. What about it?"

I said, "Well, I just wanted to give it to you before you started so you will know the circumstances."

"Well," he said, "you can do anything you want to about it. As soon as you get off this ship there will be a whole bunch of fellows on the beach to take your place."

Then he went and rushed up the deck and talked to the chief mate, Carl Tranberg.

Q. Did you see him talking with the mate?

A. I did.

Q. Did you hear the conversation?

A. No, sir.

Trial Examiner Myers: Was this man hired?

A. He was.

Trial Examiner Myers: Was the young boy hired?

A. Yes, sir. I talked to the young boy too.

Trial Examiner Myers: Did they have two men to take Buckless' place? [191]

A. No. Buckless was the boatswain. They moved up a quartermaster to the boatswain's job and an A. B. took the quartermaster's place and they hired an A. B.; and one ordinary seaman also quit, I believe. I don't remember the circumstances.

(Testimony of J. Gordon Rosen.)

Q. (By Mr. Martin) Do you remember his name?

A. Pleasant, I believe. Linville Pleasant. It is either Linville Pleasant or Pleasant Linville.

Q. Did you see anybody standing with the mate and Herman when they had that conversation?

A. I saw the pumpman, Jack Gallant and a quartermaster, George Hart.

Q. Was Hart within hearing distance of that conversation?

A. He was right next to the mate at the time.

Q. Can you tell us where they were standing?

A. They were standing adimships on the main deck close to the flying bridge.

Q. Would the quartermaster Hart's duties place him in that spot at that time?

A. Yes, sir, his duties were to assist the senior officer in charge.

Q. And he would normally be standing there?

A. He would.

Q. And was? A. And was. [192]

Q. Did you have any conversation with mate Tranberg later that afternoon?

A. Yes, I did.

Q. Tell us what happened. What was said?

A. At 1:00 o'clock I proceeded to turn to, which is a term for going to work. The mate stopped me. After the rest of the fellows had gone past him he stopped me. He said, "Are you going to work until noon or until 5:00 o'clock?"

(Testimony of J. Gordon Rosen.)

I said, "What do you mean? I have the rest of the day off?"

He said, "No. You are finished. You are through."

I said, "Do you mean I am fired?"

He said, "Yes."

I said, "What is the reason for this?"

He said, "Well, it might be the reason that your work is not satisfactory."

I said, "It has taken you a long time to find this out."

Q. You said that?

A. I did. He laughed and walked away up the fore deck and that is the only conversation I had at that time with him.

Q. Where were you standing when you had that conversation? A. On the after main deck.

Q. Did you talk with other members of the crew about this?

A. I did. I came back in the fore-castle about a half hour after and there were F. W. White, Robert Clark, Percy Guy, and [193] some others in there. They said, "We understand you are fired."

I said, "Yes, I am fired."

They were pretty mad about it. They said, "We know what you are getting fired for. What do you want us to do about it? Sit down?"

I said, "No. Come up to make out affidavits and we will file a charge with the Labor Board."

Q. You were aware of your rights under the Wagner Act? A. At that time I was, yes.

(Testimony of J. Gordon Rosen.)

Just as we were speaking about it, the mate came back. He said, "All right, you fellows. Are you going to go to work or not?" and they turned to and went to work. I packed up and received my money from the captain and discharge.

Q. To your knowledge were any others discharged that day?

A. Not to my knowledge. Not that particular day. The day previous Buckless had been fired.

Q. To your knowledge were any others fired on either of those two days than you and Buckless?

A. I believe an ordinary seaman had been fired at the same time Buckless was.

Q. Do you remember his name?

A. Pleasant Linville.

Q. Of your own personal knowledge do you remember any facts about his case? [194]

A. Very slightly.

Q. On the "Nevada" when you collected your money from the captain did you have any conversation with the captain?

A. No, I didn't because C. L. Hand was in there and I didn't wish to engage the captain in conversation in his presence.

Q. Now you testified that you were discharged from the SS "California" on or about September 19 or 20, 1937?

A. September 18.

Q. I am sorry. September 18, 1937?

A. Yes, sir.

(Testimony of J. Gordon Rosen.)

Q. To your knowledge were any others discharged from the "California" about that time?

A. Yes, sir. James Blasingame and Arthur Spencer.

Q. Any others?

A. That is all that I know of, and myself of course.

Q. Do you know that there were no others?

A. I don't know if there were any others.

Mr. Martin: Mr. Examiner, that terminates the employment of Mr. Rosen on one more ship and we will take up another ship after lunch.

Trial Examiner Myers: You mean you want to recess now?

Mr. Martin: We would like a recess.

Trial Examiner Myers: Is that agreeable with you?

Mr. Van Dusen: Well, I would just as soon go on and let him complete before the recess. How long will it take? You [195] see, I will want a little time to go over my notes and if you can complete your examination in a few minutes I would rather go ahead.

Trial Examiner Myers: How long will it take? A half hour or so?

Mr. Martin: Yes, it will take probably half an hour or an hour with this witness.

Trial Examiner Myers: All right then. We will recess now until a quarter to two.

(Thereupon, a recess was taken until 1:45 o'clock p. m.) [196]

(Testimony of J. Gordon Rosen.)

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:45 o'clock p.m.)

Trial Examiner Myers: Are you ready to proceed?

Mr. Martin: We are ready, Mr. Examiner.

J. GORDON ROSEN

resumed the stand and testified further as follows:

Direct Examination

(Continued)

Q. (By Mr. Martin) Mr. Rosen, while you were employed on the SS "Nevada" in 1938 were you ever assigned to duties that other able bodied seamen were not assigned to?

A. Yes, sir, I was.

Q. Will you please relate those?

A. In Bilboa, Spain, they called us out at night. The ship was making away from the docks. The mate told me to go up forward and see that those Spaniards up there steered the ship right. And the next day he came back at eight o'clock and singled me out and told me: "I want you to see that the deck is straightened up. Take these men with you and get the deck straightened up." In other words, I took the boatswain's place.

Q. Where was the boatswain?

A. He was on dock, and couldn't get aboard the ship.

(Testimony of J. Gordon Rosen.)

Q. Why not?

A. The ship was surging back and forth so badly that they [197] had taken the gangway in, and he attempted to come aboard, and the mate said: "I don't want to see you get hurt. Stay on dock."

Q. So in this specific instance you performed the boatswain's duties? A. I did.

Q. What was your rate of pay on the "Nevada" in 1938?

A. Well, the first trip in 1938 it was eighty dollars a month, plus overtime. The second trip I received a rate of pay of eighty-five dollars a month, plus overtime, from the date we signed up foreign articles; a raise of five dollars in general wages and five cents in overtime; from seventy cents an hour to seventy-five cents an hour.

Q. And was that the rate of pay until you were discharged? A. It was.

Q. Did all the able bodied seamen get the same rate, same pay? A. They did.

Q. To clear the record, Mr. Rosen, will you please state how long it has been since you have had any hair on your head?

A. Six years ago my hair fell out and I was completely bald since then until about a month or two ago, when it started coming back in spots.

Q. And then you shaved it off?

A. Yes, sir. [198]

(Testimony of J. Gordon Rosen.)

Q. So during all the time you have worked on Texas Company ships your head has been completely bald? A. It has.

Q. Now, Mr. Rosen, you testified that you worked on Texas Company Ship, SS "Washington" from about June 1, 1938, until about July 14, 1938? A. Yes, sir.

Q. When you shipped on this boat, what conditions on the boat did you observe?

A. I went aboard ship. The crew came back. I asked why there were no screens in the forecastle, no proper wind chutes. The screens on the door were broken, the ventilators were not screened, and there were not sufficient buckets, and the white linen was not changed every week. One member of the crew, Alfred Wukasch, told me that since they had stopped having union meetings on this "Washington" they had not been getting very much. I asked them what was the reason they stopped having meetings; and they said, well, whenever they had meetings and elected delegates, the delegates got fired.

Mr. Williams: I move to strike that. No officer of the company was present. I don't see how that is binding on us; hearsay statements of other members of the crew. Furthermore, it is not responsive to the question.

Trial Examiner Myers: Read the question.

(The question was read by the reporter.)

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: I will strike out that part of the [199] testimony where he refers to the conversation with the fellow workmen. Otherwise, denied.

Q. (By Mr. Martin) In your conversation with the crew, were you informed that no union meetings were allowed on the boat?

A. I was informed that when they held union meetings and elected delegates, the delegates got—

Trial Examiner Myers: The question calls for a “yes” or “no” answer.

A. Not definitely, I was not informed, no, sir.

Q. (By Mr. Martin) Can you explain that please?

A. Yes, sir. I asked why the meeting had not been held on the ship. Alfred Wukasch told me that when they held a meeting and elected delegates, the delegates got fired; and, therefore, they didn't think there was much reason to have meetings.

Mr. Williams: I move to strike that testimony for the same reason.

Trial Examiner Myers: Denied.

Mr. Williams: Execption.

Q. (By Mr. Martin) Mr. Rosen, while you were working on the SS “Nevada” during 1938, was any of your work criticized adversely?

A. Never.

Q. Now, on or about Wednesday evening, June 8, 1938, did you participate in a discussion with the chief engineer? A. I did. [200]

(Testimony of J. Gordon Rosen.)

Q. Will you tell us about that discussion?

A. I made some notes on that conversation.

Q. Have you them with you?

A. Right here.

Q. When were those notes made?

A. Immediately after the conversation took place. I took notes on this conversation, and any conversation I had with any officials of the company, and any conversations I heard any of the delegates or any of the members of the crew have with officials, such as engineers and so forth on the ship.

Q. When did you make these notes?

A. Within an hour after the conversations took place, at least.

Q. What were these conversations about?

A. Union activities.

Q. Where were you when you wrote down these notes? A. In the forecastle.

Q. Did other people see you make these notes?

A. Yes, sir.

Q. Name some of them.

A. Alfred Wukasch, L. Simmons, E. Monesell, F. W. Zinkiewicz, C. Buckless, Archie West, and a seaman by the name of Burns, and another ordinary seaman who relieved Burns for one trip. I don't remember his name.

Mr. Martin: Mr. Examiner, I ask that the witness be allowed to consult these notes in his testimony with respect to conver- [201] sations noted therein.

(Testimony of J. Gordon Rosen.)

Mr. Van Dusen: I would like to ask whether the witness has an independent recollection of those happenings, or if he needs notes to refresh his recollection?

Trial Examiner Myers: Do you need the notes to refresh your recollection?

A. I believe I do. Some of these conversations were rather complicated and exact.

Trial Examiner Myers: Then he may. You haven't any objection then?

Mr. Van Dusen: Well, if he uses his notes to refresh his recollection.

Trial Examiner Myers: I beg your pardon.

Mr. Van Dusen: Not if he is using his notes to refresh his recollection.

Trial Examiner Myers: Go ahead.

Q. (By Mr. Martin) Now with the help of your notes, Mr. Rosen, will you please tell us word for word, in so far as you are able, the discussion of Wednesday evening, June 8th.

A. Yes. On Wednesday evening, June 8th, around six p.m. several of us were standing on the poop deck talking to the chief engineer, Nathaniel Dilbert.

Q. Who was standing there?

A. C. Buckless, myself, F. W. Zinkiewicz,—

Q. And the chief engineer? [202]

A. And the chief engineer and several others. And we had the following conversation. I believe Buckless has been on the ship previously. Buckless

(Testimony of J. Gordon Rosen.)

informed Dilbert that he had been on the "Nevada", and just got fired off the "Nevada".

Mr. Williams: Mr. Examiner, we want an exception to all these conversations unless it is shown that a master of the vessel, the master or one of the mates, or some officer of the company itself was present, because without their presence the conversation is merely self serving and hearsay.

Trial Examiner Myers: He is testifying about a conversation now, as I understand, between the first mate and Buckless.

A. No, sir, the chief engineer and Buckless.

Mr. Williams: We would like to make these matters plain, Mr. Examiner. There is no way for the respondent to meet that testimony. There couldn't be. These are purely conversations among the members of the crew.

Trial Examiner Myers: What about the chief engineer?

Mr. Williams: He is not an officer of the vessel in that respect. The master is the only true officer on any ship. The mates are simply his assistants. That is the marine law, and always has been. When the master leaves, then his first mate automatically becomes master. The engineer is simply a man that has charge of the power plant of the vessel, and not of the personnel. [203]

Trial Examiner Myers: I will overrule the objection.

Mr. Williams: Note our exception.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: I will give you an exception.

A. The following conversation took place.

Dilbert: "Were you one of those fellows that was in that scandal on the 'Nevada'?"

Buckless: "Yes, I was."

Dilbert: "Well, tell us about it. I heard about it from several different fellows, but I ain't got the straight of it yet. Don't be backward. Tell us about it."

Buckless then explained: "We had been fired for union activities and had filed a complaint with the N.L.R.B. The investigator said we had good ground for a case."

Dilbert: "Well, what do you expect to get out of it?"

Buckless: "Back wages and some assistance and reinstatement on the 'Nevada'."

Dilbert: "Well, I ain't in no position to talk, but you know if you go back on that ship they can make it very miserable for you."

Buckless: "If they do that, I can take it further. Get statements from the crew and take it to the main office."

Dilbert: "If I was on a ship where I wasn't wanted, I would get off."

Buckless: "Wouldn't put your tail between your legs like a dog and run, would you?" [204]

Dilbert: "No, but I don't care if a man is a Wobbly on my ship or not. All I want of him is

(Testimony of J. Gordon Rosen.)

eight hours work, and when he is done with that he should crawl into his bunk and shut up. When I get a man who won't do that, I know how to handle him."

Buckless: "But that ain't right. The company puts up working rules, and when we go to make a complaint that they are not being followed then we get fired."

Dilbert: "They didn't give that reason for firing you, did they?"

Buckless: "Yes, I was a delegate on the 'Nevada' when I got fired. The next day they elected Gordon Rosen, delegate, and he got fired."

Dilbert: "Well, that was mighty stupid of them. They would never catch me like that. You can bet on that."

Rosen: "You know the M.E.B.A. is going to conduct an election in The Texas Company."

Dilbert: "Don't you worry about that. We will take care of all that."

Rosen: "That would be a good thing if the engineers in this company were organized. It would mean more engineers, straight eight hours a day, and a dollar an hour overtime."

Dilbert: "Yes, I used to belong to the M.E.B.A. twenty years ago, and what did I get out of it? I got sold out."

Rosen: "This is 1938. A new and more democratic union." [205]

Dilbert: "The heads of your union will sell you out too in a little while."

(Testimony of J. Gordon Rosen.)

Rosen: "That is pretty hard to do in our organization. I tell you, you ought to come to the meetings we hold."

Dilbert: "No." [206]

Mr. Williams: Mr. Examiner, we again move that all that be stricken because it is absolutely irrelevant to any matter in the charge or in the complaint. It is simply gossip of a crew as to what happened on this ship, and what happened on that, and for further reasons stated before.

Trial Examiner Myers: Denied.

Q. Now, did you have a union meeting on June 9?

A. We did. On Thursday, June 9, 6:30 p. m., a meeting was called in the crews messroom. Phil Zinkiewicz was elected——

Trial Examiner Myers: Wait a minute. The questions was whether you had a meeting?

A. Yes.

Q. (By Mr. Martin) Will you please tell us what transpired at that meeting?

A. Phil Zinkiewicz was elected deck delegate and D. G. Rosen was elected ship delegate. We were instructed by the N. M. U. members of the crew to request better living and working conditions. Immediately after the meeting Zinkiewicz and myself went up to the captain and had the following conversation with him. We were instructed by the N. M. U. members of the crew to request screens in the forecabin, and that someone clean out the bathroom, and other things.

(Testimony of J. Gordon Rosen.)

Q. What did you do at the conclusion of that meeting?

Mr. Van Dusen: In answering this question Mr. Rosen has not stated that any officer on board the ship was present. I [207] move to strike it out for the reasons before stated.

Trial Examiner Myers: This is a meeting of a union. Naturally there would not be any officer of the company there. I will deny the motion.

A. Immediately after the meeting Zinkiewycz and Rosen went up to see the captain, and had the following conversation with him.

Q. (By Mr. Martin) Who was the Captain?

A. Bergman.

Q. Will you tell us please what was said in that conversation?

A. We had the following conversation. Rosen: "Captain, the union men on this ship have just held a meeting, and Zinkiewycz was elected deck delegate and I was elected ship delegate. We would like some information on several things." Captain Bergman: "Well, I don't know anything about any delegates. We don't recognize any union on this ship. If you have anything to say as an individual or collectively you can tell me." Zinkiewycz then talked with the captain and the mate, after which I had further conversation with them. Rosen: "There is something else we would like to find out. Here is the overtime reckoned on this ship?" Captain: "We pay only for the time you are actually

(Testimony of J. Gordon Rosen.)

at work, no more." Johanson: "Yes, only for the time you work." Rosen: "Well, Buckless and I had a talk with Captain Hand while we were on the [208] "Nevada", and he told us the company would give anything any other company would give. Now, here in the Tanker Agreement, which is the minimum all companies are paying, the least you get is one full hour when ever we are called to work overtime." Captain Bergman: "Till such time as the working rules now in effect are changed I can only abide by what rules are now posted." Rosen: "Then, I guess we will have to see Captain Hand about it." Captain Bergman: "You can do that." Zinkiewicz asked about the repair of screens, and changing linens oftener, and cleaning the washroom and getting it in a more sanitary condition. The captain agreed on the changes, and then called the mate, Mr. Johanson, down from the bridge, and asked him about keeping the washroom clean. The mate agreed to have someone clean up the washroom.

Q. Now, Mr. Rosen, when did the boat rearrive at Port Arthur? A. On June 22.

Q. Tell us what happened on that day?

A. We arrived at Port Arthur at 1:30. I was working over the side, and Zinkiewicz informed me that he was fired. I asked him why, and he said that the mate told him he was too slow. I then told him to call Captain Hand and make an appointment, and I would talk to Captain Hand after I

(Testimony of J. Gordon Rosen.)

was through working; and he said he would. [209]

Mr. Williams: I move to strike the testimony that Mr. Zinkiewycz told him he was fired, not being in the presence of an officer of the ship.

Trial Examiner Myers: Read the question?

(The question was read by the reporter.)

Trial Examiner Myers: Motion denied.

Mr. Williams: Exception.

Q. (By Mr. Martin) Continue, Mr. Rosen.

A. I was washing up at 4:30, and another sailor came and told me that Zinkiewycz and Captain Hand were aboard the ship. I hurriedly dressed and went out to meet them. Zinkiewycz was standing by the gangway. I asked him what had happened. He said he had talked to Captain Hand, who was now talking to the mate, Mr. Johanson. About this time Captain Hand and Two Gun Myers came out of the mate's room, and I had the following conversation with Captain Hand. Hand: "What's the matter you haven't any socks on?" Rosen: "No, I was in too big a hurry to try to get a chance to talk to you." Hand: "Well, what is it?" Rosen: "It is those old working rules you have posted, of October, 1937. We do not feel that they are up-to-date with other company working rules." Hand: "Oh, that's nothing. What is the exact thing in dispute?" Buckless: "It's this half hour business." Rosen: "Yes. All other companies are paying nothing less than the first hour. This company claims they will live up to what other companies [210] are doing,

(Testimony of J. Gordon Rosen.)

yet we cannot get a reasonable adjustment." Hand: "Well, the captain is not here now, and I will be back in the morning while the captain is here and we will straighten this out." Rosen: "All right." Captain Hand talked to Zinkiewycz right on deck, and he said that Captain Hand told him to go to work.

Q. Mr. Rosen, did you have any other discussion with Captain Hand the following day?

A. I did.

Q. Will you please relate that?

A. The next day, June 23, Captain Hand came aboard to talk to Captain Bergman about 9:00 a. m. After he left the captain's room I talked to Captain Hand, and had the following conversation.

Q. Talked to whom?

A. To Captain Hand: "I see you've got your socks on this morning." Rosen: "The deck is hot. I've got to wear them now." Hand: "Now, what was it you wanted to see me about?" Rosen: "I have been elected by the crew as delegate to ask you about working rules. The Texas Company claims they will give the best. However, all other companies live up to the minimum of the Standard Tanker Agreement. This minimum is one hour's pay for whatever is worked the first time called. However, on this ship we are called out at any hour, stand by until we are needed, sometimes as long as another hour, then we work a half hour and get a half hours overtime. One [211] instance

(Testimony of J. Gordon Rosen.)

when we were all on day work we worked until after 5:00 p.m.; in fact, until 5:25 p.m., and got nothing for it." Hand: "Well, how about the times when you worked five or ten minutes and get a half hours overtime, and when you work thirty-five or forty minutes you get an hours overtime for it, and you know when you are called out to work you boys all take a few minutes for a smoke or a cup of coffee to wake up on." Rosen: "The mate is very careful that we work the full half hour, and the other issue is that hour overtime is to start when we are called, if we are out on deck within fifteen minutes. All other companies are paying these things as minimum conditions before the National Maritime Union would recognize any signed agreement, and some companies, the Sinclair, for instance, in paying overtime for all work after 5:00 p. m. and before 8:00 a. m. If you wish to have a copy of the Standard Tanker Agreement, I have one in my locker, and I will get it for you." Hand: "No, no. We do not recognize any agreement, and we have no interest in any union tanker agreement. Our policy is that in the past we have, and in the future as long as The Texas Company remains in business, we will give our employees the best working conditions in the industry." Rosen: "I believe The Texas Company will follow this policy." Hand: "To be frank with you, I do not know what our other ships are doing in this matter. There are two of them in port. I will find out from the mates and

(Testimony of J. Gordon Rosen.)

captains and [212] let you know before you sail."

Rosen: "All right." However, we were in port two more days, but we received no further word from Captain Hand in this connection. Captain Hand did not contact me about this at any time.

Q. Now, on June 24, did you have a discussion with quartermaster Buckless?

A. Quartermaster Buckless and other quartermasters.

Q. Tell us about that. Tell us about the instance and the conversation?

A. About 12:30 at noon June 24, Quartermaster Buckless came to me and told me that the mate, Mr. Johansen, left word with the second mate, Mr. Carr, that Buckless was to go over the side and paint with the crew. I said this was contrary to the working rules. With Buckless, deck delegate Zinkiewicz and the other two quartermasters, West and Zihlrich we went up to the second mate, Mr. Carr, who was senior deck officer on watch, and had the following conversation. Carr: "What is this, a delegation?" Buckless: "Yes. The mate wants me to work over the side, and it is against the working rules of the Standard Tanker Agreement." Carr: "Yes, I know that. I told the mate I would not be responsible. I will go up and see the captain about this." [213]

Mr. Williams: Mr. Examiner, I suppose we will go along indefinitely along this line. What in the world is the competency whether certain seamen,

(Testimony of J. Gordon Rosen.)

able seamen or not, should go over the side and paint; what has that got to do with the charge in this case? It might have to do with a suit for extra wages or extra time. More especially, when he says that the rules he is referring to as having been violated are the rules of some other company, some other ship, or some other working agreement. This is not a controversy over overtime, nonpayment of wages or damages. He was put to doing work he thought he ought not to do. It seems to me we can go on forever about this matter, and never touch the charge or the complaint.

Mr. Martin: Mr. Examiner, the issue is whether Mr. Rosen was discharged for his union activities. That being the issue, any conversation with respect to anything even remotely related to union activities that Mr. Rosen had with any officer of the ship is pertinent to show, (1) that Mr. Rosen was engaged in union activities; and (2) that his union activities came to the attention of the officer or officers of the ship involved in the conversation. This testimony is offered, not for the truth or the merits of the substance of the conversation, but it is offered simply to show that here is a man who is being active on behalf of his fellow workers in a union, and that his activities are coming to the [214] attention of the officers of the ship. We are offering the substance of this conversation merely because I have to have it word for word in order to indicate that there was a conversation, and so

(Testimony of J. Gordon Rosen.)

that it cannot be claimed that he is fabricating the conversation. Here is a man who made notes right after each conversation, and now he is merely relating it to prove the two points I mentioned.

Mr. Pipkin: I understand you are not vouching for what he says?

Mr. Martin: It is not a matter of vouching. The conversations are not offered for the truth of the statements. The conversations are offered for the reasons I have mentioned.

Mr. Williams: Then if these conversations are not offered for the truth of the statements then they certainly have no place in any hearing in any civilized country.

Mr. Davis: I think what Mr. Martin means to say is that they are not offered to show or prove whether or not the problems which Mr. Rosen was talking about had merits in them. Now let the record show, for the benefit of counsel for the respondent, that we believe what this witness is saying is true, or we would not have him on the stand. But we don't care whether or not the problems that he was discussing with these different officers had merit or not. We simply want to know what he said, and what was said in turn by the officer to whom he was talking. [215]

Trial Examiner Myers: Is there a motion before me?

Mr. Williams: I move that all evidence as to these conversations the witness had with members of the crew as to whether or not they should or

(Testimony of J. Gordon Rosen.)

should not go over the side and paint the ship, or any part of it, be stricken, as having no relevancy whatsoever in this hearing. It is simply a controversy over some work, and not a controversy he injected himself into.

Trial Examiner Myers: I will deny the motion.

Mr. Williams: Note our exception.

Q. (By Mr. Martin) Will you continue, Mr. Rosen? A. What was the last?

Trial Examiner Myers: You were telling about the conversation with the second mate.

Q. (By Mr. Martin) Will you continue, please?

A. With Buckless and the other quartermasters we had this conversation.

Q. You went up to see the mate on behalf of Buckless?

A. As a delegate of the crew.

Q. All right.

Trial Examiner Myers: Is this the chief mate?

A. He is the senior deck officer, in charge of the deck at that time. The chief mate was not present.

Q. The chief mate was not on board, is that what you mean to say? [216]

A. The chief mate was not on board.

Q. The captain was not on board?

A. The captain was on board, asleep in his room.

Q. This was the mate in charge of the ship?

A. He was.

Q. Do you know what his name was?

(Testimony of J. Gordon Rosen.)

A. His name was Carr.

Q. C-a-r-r? A. C-a-r-r.

Q. (By Mr. Martin) Proceed please.

A. Carr: "What is this, a delegation?"

Buckless: "Yes. The mate wants me to work over the side, and it is against the working rules. Here it is in black and white." We then showed him the working rules of the Standard Tanker Agreement.

Carr: "Yes, I know that. I told the mate I would not be responsible. I will go up and see the captain about this." He was gone a few minutes, and when he returned he said the captain told him it was the mate's orders and he would not change them. I then said the thing to do is to see the captain right now and settle this right now. We went to the captain, and had the following conversation.

Q. Relate that conversation.

Trial Examiner Myers: Who was in that conversation?

A. I was there as the ship's delegate. F. W. Zinkiewicz was [217] there as the deck delegate. Buckless was there as presenting the complaint. The other two quartermasters were there, Archie West and Ernest Zihlroch, both to see that they would not have to do the same thing.

Q. Was the mate there?

A. The second mate was not there. He was on deck attending to his duties. The captain was there at that time.

(Testimony of J. Gordon Rosen.)

Q. (By Mr. Martin) Continue, please.

A. And we had the following conversation.

Rosen: "Captain, there seems to be some confusion existing about these quartermasters working over the side. The mate left the order for the second mate, who says he will not be responsible, and he asked you about it and you said you would not be responsible either. Now we want to know who is responsible, because we think this is a case of overtime pay."

Captain Bergman: "Well, you are not a quartermaster. Who are you talking for?"

Rosen: "Zinkiewycz was elected deck delegate, and I was elected ship delegate to speak as representative of the crew."

Captain Bergman: "Now I want to tell you once and for all, I will not recognize any kind of delegates on my ship, and I am going to tell you the same thing I told Captain Hand. I am not required to recognize any delegate. When this fellow here," pointing to Zinkiewycz, "came up and spoke to me as a [218] delegate before, I did not have anything to do with him."

Rosen: "Well, Captain, that letter from Captain Roney pasted in the mess room says that according to the Wagner Act we have the right to choose our delegates."

Captain Bergman: "It says no such thing. I have all the letters here in my office." He produced the working rules, but not this specific letter.

(Testimony of J. Gordon Rosen.)

Rosen: "This is not the letter."

Captain Bergman: "There is no letter saying I have to recognize delegates."

Rosen: "In view of the fact that the N. M. U. was certified by the N. L. R. B. as sole collective bargaining agents for Texas Company ships and the N. L. R. B. gives us the right to elect delegates, do you still deny us our rights under this government law?"

Captain Bergman: "I have nothing to do with that. That is between you and The Texas Company. Now go along. I will talk to the quartermasters by themselves."

I didn't wish to dispute the captain's authority, and I asked Buckless and the other quartermasters if it would be satisfactory for me to leave, and they said yes, and I left, and F. W. Zinkiewicz left.

Trial Examiner Myers: Where was the boat at the time this conversation took place?

A. Docked in Port Arthur, Texas Company terminal. [219]

Trial Examiner Myers: Go ahead.

Q. (By Mr. Martin) Mr. Rosen, did you have a discussion with chief engineer Dilbert on June 25?

A. I did.

Q. Will you tell me about that conversation?

A. I went up to the M. E. B. A. Hall and talked to Mr. Perridia, a representative of the M. E. B. A., affiliated with the C. I. O., which the N. M. U. is affiliated with.

(Testimony of J. Gordon Rosen.)

Q. Where was this?

A. In Port Arthur, on Saturday afternoon, June 25, about 6:00 p. m. I distributed circulars telling of an N. L. R. B. election on ships operating out of the Sabine area. These were from the M. E. B. A. I gave them to engineers Dilbert, Murphy and Gower, and had the following conversation.

Trial Examiner Myers: Where did you distribute it?

A. On board the ship, on the poop deck.

Q. What ship? A. S. S. "Washington".

Q. When you refer to the M. E. B. A. what organization do you mean?

A. Marine Engineers Beneficial Association.

Trial Examiner Myers: All right.

A. I had the following conversation. Dilbert: "How much do you get for all this secretarial work for the union?"

Rosen: "Nothing but the privilege of doing the work." [220]

That is all the conversation I had that particular time.

Q. (By Mr. Martin) Who was present other than you and Dilbert?

A. The other assistant, Mr. Murphy, and the other assistant, Mr. Gower, the other assistant engineer.

Mr. Williams: We make the same objection to that testimony.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Move to strike it out?

Mr. Williams: Move to strike it out.

Trial Examiner Myers: Motion denied.

Q. (By Mr. Martin) Mr. Rosen, did you have a union meeting on Saturday evening, July 2?

A. We did.

Q. What transpired at that meeting?

A. A letter protesting Captain Bergman not recognizing elected delegates or living up to minimum working conditions was concurred in. This letter was written by myself and signed by the other department delegates. The letter was sent to Captain Roney, Maritime Superintendent for The Texas Company, New York. Two Western Union telegrams were sent from Chester, Pennsylvania, to Captain Roney on the same matter. We never received any answer.

Q. Was it addressed to him?

A. It was. Two telegrams were sent to Captain Roney in New York. One was sent by myself, as the minutes of the meeting provided for, at the Pennsylvania Railroad Station, [221] on July 4, in Chester, Pennsylvania.

Q. Addressed to Captain Roney?

A. It was sent to Captain Roney, and was as follows.

Q. Where was it sent from?

A. From the Pennsylvania Railroad Depot, Western Union telegram.

Q. Was it signed by you?

(Testimony of J. Gordon Rosen.)

A. Signed, Crew, S. S. "Washington".

Q. What did the telegram say?

A. "Protest Captain Bergman non-recognition of elected delegates on S. S. 'Washington', and also refusal to live up to minimum of Standard Tanker Agreement." It was never answered. Also the radio operator, whose name is William Kline, sent a similar telegram from this place, practically the same thing. He sent it as recording secretary for the meeting.

Mr. Williams: We move to strike the testimony in regard to the telegram and its contents, and also the letter, because it is not shown that the same was ever received by any officer for the respondent.

Trial Examiner Myers: Motion denied.

Q. (By Mr. Martin) Mr. Rosen, where did the S. S. "Washington" arrive or dock at on Tuesday, July 11, 1938?

A. Docked at Anesville, Louisiana, across the river from New Orleans.

Q. What did you see from the boat? [222]

A. The crew of the Napoleon Avenue ferry, about 100 feet astern of us, were on strike. They were members of the inland boatman's division of the N. M. U. We went out and had conversations with them, and told them we were supporting them 100 per cent. However, we did not get a draw in that port, and we could not make very heavy contributions. We did contribute to some extent. Also the ferry was manned by strike breakers, and

(Testimony of J. Gordon Rosen.)

we thought it was our duty to discourage them. I had a large sign, about 13 feet long or 15 feet long, and about 4 feet high, on yellow cardboard, and we drew in large letters, very plain, on the sign the words, "C. I. O.," and hung it on the side directly facing the ferry on strike.

Q. Was this sign painted?

A. The sign was painted. The sign was on yellow cardboard, and painted with black paint. In the afternoon, on my watch below.

Q. That is during one of the 16 hours you were not supposed to be working? A. Yes, sir.

Q. What did you do with this sign?

A. Several members of the crew requested me to put out this sign. I drew it, and hung it up on the stern; and we showed the sign to the second mate, the second engineer, the chief engineer, Captain Bergman, but nothing was said about it. [223]

Q. Who showed it to them? A. I did.

Q. You took it upon the bridge?

A. The captain was looking back aft from the bridge, and we displayed it on the fore part of the poop deck, where it was in plain sight.

Q. You lifted it up so he could see it?

A. We did. And then we took it back and put it out on the side facing the New Orleans side, because there was a strike in New Orleans of the C. I. O. affiliate, and we put it in plain view of all the tugs coming down the river from New Orleans.

Q. Were any comments made with respect to

(Testimony of J. Gordon Rosen.)

this sign by any of the officers to whom you say you specifically pointed it out? A. Yes.

Q. What was said?

A. The second engineer, Mr. Gower, said we ought not to put that sign on.

Q. Anything else?

A. That is all I can remember.

Q. The captain said nothing?

A. He didn't at the time.

Q. Did he register any complaint?

A. No, sir. [224]

Q. Did he make any motions? A. No, sir.

Q. Were you close enough to be able to say by reading his face whether he was pleased or displeased? A. Very much displeased.

Mr. Williams: Your Honor, that is going too far afield. That is like trying to describe a smile.

Trial Examiner Myers: I agree with you.

Mr. Williams: We move to strike.

Trial Examiner Myers: Motion granted.

Mr. Martin: Will you read the question?

(The question was read by the reporter.)

Q. May we have an answer to the question. Were you close enough to see? A. Yes, I was.

Q. You were close enough to see? A. Yes.

Q. And what did you see?

A. The captain looked at it, and turned around and put his hands behind his back, and walked in his room and shut the door.

(Testimony of J. Gordon Rosen.)

Q. Approximately when did the "Washington" next stop at Port Arthur?

A. The day I got fired, about July 14.

Q. 1938? [225] A. Yes, sir.

Q. Did you do anything with this sign on July 14, 1938?

A. Yes. Coming up the channel we put the sign out in plain view of The Texas Company docks; and we came into the dock, and we put the sign on the side facing the dock. Several of the officials of the company looked at it, and members working on the dock and in the refinery. This was early in the morning.

Q. Who put the sign up?

A. Myself and Buckless.

Q. On this occasion did you specifically point the sign out to any of the officers aboard the ship?

A. No, sir, we did not on this specific occasion. We were too busy.

Q. Were any remarks made on this occasion by any officers of the ship?

A. Not that I remember. The sign was torn down by some one about 11:30. I went out on the dock and retrieved it and put it up again, with Buckless' assistance.

Q. Did you see it torn down?

A. No, sir, I didn't see it torn down. I saw it lying on the dock.

Q. On July 14, 1938, did Captain Hand board the ship? A. He did.

(Testimony of J. Gordon Rosen.)

Q. Did you have a conversation with him? [226]

A. Yes, sir.

Q. Will you please relate that conversation?

A. He spoke to me in a very hostile manner. Archie West was trying to talk to him, and as soon as he saw me he tried to ignore me. I went up amidships and told West to come up with me, and he tried to ignore me.

Q. Who went amidships?

A. Captain Hand was talking to the quartermaster, Archie West. Archie West had some grievance, and the captain was talking to him outside of the chief engineer's door. As soon as I approached he saw me coming, and he walked rapidly up amidships and tried to ignore me. I followed him amidships, and about the foot of the ladder I called his attention, and had the following conversation with him.

Trial Examiner Myers: Who was there beside you and Captain Hand?

A. Archie West was there, Two-Gun Myers, Alfred Wukasch, F. W. Zinkiewicz, L. Simmons, and others whom I do not recall.

Q. Is this the conversation you told us about before?

A. No, sir, this is a different conversation.

Q. All right, tell you about what took place this time.

A. Captain Hand spoke to me in a very hostile manner, he said: "What do you want?" And I

(Testimony of J. Gordon Rosen.)

said: "I would like to get some information." And he said: "Information on what?"

And I said: "In regard to the overtime question, for one [227] thing."

Hand: "What overtime?"

Rosen: "Did you come to a decision on the overtime question I talked to you about last trip?"

Hand: "Yes, I did; and I am getting damned tired of this. Now what overtime are you talking about? Whose overtime is it?"

Rosen: "This quartermaster, Archie West, for one."

Hand: "Well, who are you to do all the talking? What is your name?"

Rosen: "My name is Gordon Rosen, and I was elected ship's delegate to speak for the crew."

Hand: "Well, you are not a quartermaster. Now go along with you. I will talk to this quartermaster myself."

Rosen: "Speaking as a delegate, I am referring to the letter posted in the mess room giving us the right under the Wagner Act to elect representatives of the crew to speak for and bargain for the crew."

Hand: "There never was any such letter or any statement like that. We do not recognize any delegate or any representatives of the crew to speak or bargain for them. If you have any individual complaints, make them to me here now. Didn't

(Testimony of J. Gordon Rosen.)

the captain tell you this, that he wouldn't recognize any delegates?"

Rosen: "Yes." [228]

Hand: "Well, that is the way things are run in this company. Now have you any individual complaint?"

Rosen: "Yes. I would like to know why this mate calls us out and has us standing by for half an hour or more without paying us overtime."

The mate was called by Captain Hand.

Hand: "Mr. Johansen, this man says you have him standing by for half an hour, and they do not get any overtime for it."

Johansen: "I can get my overtime records and show that this man is a liar right now."

Hand: "Well, go get those records."

When the mate returned, I pointed out the instances on his own overtime record where the overtime disputes had arisen.

Rosen: "By the mate's own overtime record you can see, Captain Hand, that there are two separate times on this trip alone when we were called early in the morning and stood by for at least half an hour without receiving any overtime for it."

Hand: This said to Mr. Johansen: "Why don't you pay these men overtime from the time they are called?"

Johansen: "Well, the captain says that they must pay them only for the actual time they put in."

(Testimony of J. Gordon Rosen.)

Hand: "Well, I don't give a damn what the captain said. You pay these men this overtime."

[229]

Hand, to Rosen: "Is this all the dispute you have individually?"

Rosen: "Yes, this is the only individual dispute I have."

Hand: "Well, then run along. You will get your overtime."

However, we did not receive this overtime pay.

[230]

Trial Examiner Myers: You mean you never received it?

A. The other members of the crew told me they never received it.

Q. You did not receive it?

A. I never received it.

Q. (By Mr. Martin) Now, did anything happen of particular importance about noon that day?

A. Yes, sir, it did.

Q. Please relate that?

A. About noon delegate Zinkiewycz had put in his eight hours for the day. He went to the mate to get his pass to go ashore. He came back almost immediately and informed me that he had been fired again. He also said Buckless' and my name was on a slip, with total wages, on the mate's desk, and also signed discharge papers. Buckless and I went to the mate to find out if we were

(Testimony of J. Gordon Rosen.)

discharged, and had the following conversation with the mate. Rosen: "Why did Zinkiewycz just get fired?" Johanson: "For good reasons." Rosen: "Zinkiewycz told me that Buckless and I were also fired." Johanson: "How does he know?" Rosen: "Well, am I fired?" Johanson: "Not that I know of." Buckless: "Well, am I fired?" Johanson: "Well, you are still on the 12:00 to 4:00 watch, aren't you?" Buckless: "If I am fired I want to know it." The mate went in his room and wouldn't answer.

Trial Examiner Myers: What happened to the captain? [231] A. The captain went in his room.

Q. And left you two standing there?

A. Yes, sir.

Q. Nothing else was said at the conversation?

A. Buckless had some conversation further with the mate after I left.

Q. (By Mr. Martin) What if anything happened later that afternoon?

A. At 4:15 p. m. I was washing and the mate came back and told me he wanted to see me in his room. I went up to his room. Two Gun Myers was there. The mate said: "Here's some papers I want you to sign." Rosen: "You don't need to try to fool me. That's my discharge paper, and I am fired. Is that right?" Johanson: "Yes, I guess that's right." Rosen: "Just a few hours ago you told me I wasn't fired, and now, you tell me I am fired. What's the reason for this?" Johanson:

(Testimony of J. Gordon Rosen.)

“Reason? Well, you are not a seaman.” Rosen:
“Just what do you mean by that?” Johanson:
“Your seamanship is unsatisfactory. You don’t know seamanship.” Rosen: “I don’t understand how you can be a judge of seamanship. What particular instances can you think of where you would have the ability to criticise my seamanship? Name at least one or two.” Johanson: “I don’t have to give you any reasons for firing you.” Rosen: “Well, I have always tried to be a good seaman. I want to know where I have failed, so that the next ship I go on I will be as good [232] seaman as you are.” Johanson: “I haven’t got anything against your seamanship.”

Q. (By Mr. Martin) Mr. Rosen, if you workers continue on the ship the next trip would the papers be given to you in this same way they were on this occasion, or would they be a different sort of papers?

A. No, sir, they would not be the same.

Q. Wherein would they be different?

A. My only papers I receive is when I get fired off the job, or quit, or resign. I sign the payroll, and ship’s articles, but I don’t receive a final discharge. I have the discharge here. It is only given when my services are terminated with the company.

Q. Now, if you were to go on the next trip you wouldn’t receive discharge papers? A. No, sir.

Q. You would receive nothing?

(Testimony of J. Gordon Rosen.)

A. Nothing. This service record is continuous, except when you sign on before a commissioner, and you receive a discharge for that trip; but coast-wise it is continuous.

Q. Do I understand correctly then, Mr. Rosen, that if you are to be continued on the boat you merely sign the ship's articles for the next trip?

A. Yes, sir.

Q. But if you are not to be on the next trip you are handed [233] your discharge? A. Yes.

Q. Now, will you please proceed and relate the conversation?

A. I said, "you don't need to try to fool me. That's my discharge paper and I am fired. Is that right?" And Johanson said: "Yes, I guess that is right." Rosen: "Just a few hours ago you told me I wasn't fired, and now you tell me I am fired. What's the reason for this?" Johanson: "Reason? Well, you are not a seaman." Rosen: "Just what do you mean by that?" Johanson: "Your seamanship is unsatisfactory. You don't know seamanship." Rosen: "I don't understand how you can be a judge of seamanship. What particular instances can you think of where you would have the ability to criticise my seamanship? Name at least one or two?" Johanson: "I don't have to give you any reasons for firing you." Rosen: "Well, I have always tried to be a good seaman. I want to know where I have failed, so that the next ship I go on I'll be as good a seaman as you are." Johanson: "I haven't got anything against your seamanship."

(Testimony of J. Gordon Rosen.)

Q. Continue please.

A. Rosen: "I am a plain spoken man and I see you have some good company witnesses here, but just what is behind all this firing, especially of the delegates? It hasn't anything to do with Captain Hand bawling you out this morning, has it?"

Johanson: "No." Rosen: "Well, don't be afraid to give me [234] the real reason then." Johanson:

"You drag along too slow. I got a lot of work to do on this ship. Why, last trip you were working on the deck four days and before you came on here I had two men that could paint these decks in a day."

Rosen: "In the first place how come you are always firing these good men? And, in the second place, if you remember, I never painted any of the deck."

Johanson: "That mast you were sooging, washing down, last trip took you a half day to finish, and I could do it myself in a couple of hours."

Rosen: "It took the boatswain and another A. B. working together a half day also to finish the other mast, and I finished mine in the same time working alone. Beside, all this happened last trip. You never said anything to me about this before."

Johanson: "Well, I thought I would give you another chance." Rosen: "I can see that we are just

going around in circles here. There's too many witnesses here. I am going out and call up Captain Hand. Do you think he is still in his office?"

Two Gun Myers: "Captain Hand left his office a long time ago and will not be back tonight." Rosen:

"Well, how about giving me a pass so I can go

(Testimony of J. Gordon Rosen.)

ashore?" Two Gun Myers: "You are not coming back aboard these ships. You won't need a pass to get out." And then I went upon the dock and phoned Captain Hand and had the following conversation with him over the phone.

Q. Please relate that conversation?

A. Captain Hand answered the phone, and I said: "After the [235] discussion I had with you and with the mate on the "Washington" I got fired, and no definite reason was given. I do not believe that you would allow such unfair labor practices on Texas Company ships if you knew about it." Hand: "What are you talking about?" Rosen: "I am that A. B. on the "Washington" that brought up the question of half hours overtime, and you bawled the mate out about it. He fired me for this." Hand: "I don't know a thing about it." Rosen: "That's why I'm bringing it to your attention so you'll do something about it." [236]

Hand: "I can't leave the office right now. I have got too much work to attend to."

Rosen: "I want to get this matter straightened out before the ship sails."

Hand: "I will look into the matter."

Rosen: "How soon, tomorrow morning?"

Hand: "Yes, call me up tomorrow morning." And he hung up.

Q. Mr. Rosen, refreshing your recollection from notes made of conversations on the S. S. "Washington", are there any other conversations that you had aboard that ship that you wish to relate?

(Testimony of J. Gordon Rosen.)

A. Aboard the ship, I had several conversations with different members of the crew. We voted on June 11th——

Q. No, I refer to conversations with officers of the ship.

A. I had several but I don't recollect all of them.

Trial Examiner Myers: At the request of counsel for the Board, we will take a five minute recess.

(Thereupon a short recess was taken.)

Trial Examiner Myers: Are you ready to proceed?

Mr. Martin: We are, Mr. Examiner.

Please mark this.

(The document was marked "Board's Exhibit No. 9", for identification.)

Q. Mr. Rosen, I hand you a document and ask you to tell me what it is? [237]

A. That is an open letter to Texas Company seamen. On or about July 11, we had a special meeting on board the S. S. "Washington", and I drafted a letter, which I have here, in my own handwriting and read it to the crew. And they voted to have it printed and circulated amongst the other Texas Company ships, and send copy of it to The Texas Company officials. In that open letter we pointed out some specific things on Texas Company ships we believed were detrimental to the welfare of the N. M. U. members.

(Testimony of J. Gordon Rosen.)

Q. Mr. Rosen, I note that one of the signatures at the bottom of that letter is yours. A. Yes, sir.

Q. Did you authorize your name to go on that letter?

A. Yes, sir. I signed the original letter; also F. W. Zinkilswycz.

Q. Where was the letter printed?

A. At the White House Printing Company, Proctor Street, Port Arthur.

Q. And who had charge of the distributing of that letter?

A. I did, officials of the Union, and delegates.

Q. From where was it distributed?

A. Port Arthur branch of the Union.

Q. Union hall? A. Yes, sir.

Q. And to whom was it distributed, and how?

[238]

A. It was distributed particularly to Texas Company ships, by mail, personal contacts, and I stayed at the gate and handed it to men as they came on and off of ships.

Q. Approximately how many ships?

A. About ten or fifteen ships all together.

Q. Ten or fifteen ships to which it was distributed all together?

A. Yes, sir, that I know of. There might have been more, but those are the ones I know of.

Q. How many letters were distributed? How many were made?

A. About seven hundred and fifty copies.

(Testimony of J. Gordon Rosen.)

Q. All were distributed?

A. I am sure all of them were, yes, sir.

Q. Did you say copies were mailed to officers of the company?

A. Copies were mailed to officers of the company, yes, sir.

Q. What officers?

A. J. P. Roney, G. L. Hand, Mr. Meyers——

Q. Mr. E. Meyers? A. Pistol Meyers.

Q. Is Pistol Meyers the same as Two Gun Meyers? A. That is the same man.

Q. You said that you personally distributed these letters to members of certain crews as they came off the gang plank. [239]

A. No, sir, at the gate.

Q. You distributed them to those crews when they were in port? A. Yes, sir, at the gate.

Trial Examiner Myers: Stood at the gate?

A. At the gate.

Mr. Martin: Mr. Examiner, I offer in evidence what has been identified as Board's Exhibit No. 9, as being typed copy of letter entitled, "An open letter to Texas Company seamen," and signed by the crew of the SS "Washington" and four individuals of that crew.

Trial Examiner Myers: Any objection to that exhibit going in evidence.

Mr. Williams: We make the same objection to this Exhibit No. 9 that was made to the Exhibit No. 8, I believe, that mimeographed letter.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Objection overruled. I will ask the reporter to please mark Board's Exhibit No. 9 for identification in evidence as Board's Exhibit No. 9. I also ask the reporter to please note an exception for Judge Williams.

(The document heretofore marked "Board's Exhibit No. 9 for identification, was received in evidence.)

BOARD'S EXHIBIT NO. 9

An Open Letter to Texas Co. Seamen

Verbal contracts with the Texas Co. are worthless.

Some eight months ago a letter from the head of the Marine Department was sent aboard all Texas Co. ships giving definite assurance that the Texas Co. will always give their Seamen the best conditions in the industry, that they will not discriminate against any Union men, that they will listen to complaints at all times. Both the New York offices will state these things to you verbally. But between the giving of these promises and the living up to these promises there is a vast amount of inconsistency.

The Texas Company promises the best. It has been pointed out to this Company that the Standard Tanker Agreement was a minimum set of conditions that the National Maritime Union would agree to exchange for a signed contract, yet there are at least Twenty (20) different clauses in these minimum conditions that the Texas Company refuses to live up to.

(Testimony of J. Gordon Rosen.)

This can hardly be called giving the best conditions in the industry, since there are other companies giving a great deal more than the Standard Tanker Agreement, such as the Sinclair Co.—Overtime after 5:00 p. m., and before 8:00 a. m., and a straight 8-hour day for the Stewards Dept., in port: The Gulf Co., granting a large cash bonus to seamen who had been in their ships 6 months continuously. The Tide Water Co., serving fresh milk and the best grade of food at all times. The Standard Oil with a larger manning scale than the Texas Co., and other Companies granting like conditions.

When we attempt to point out these conditions to the Texas Co. officials they tell us the Captains are running the ships. After long wrangles with the Captains and heads of the departments the friction and irritation has produced enough heat and ill-feeling that the port officials are forced to step in again. These gentlemen give us all sorts of fine speeches and fine promises but nothing else which would add one penny to the expense account.

We have sent letters and telegrams to the main office and they have been absolutely ignored. This is not fair dealing, this is simple evasion.

When ship's delegates get to the point where they begin asking the company to live up to their promises, word is sent down from the main office that these men are not working to the best interests of the Texas Company the matter should be looked

(Testimony of J. Gordon Rosen.)

into. It is the delegates that get fired! We have positive proof that these messages have been sent! It has taken nine (9) N.L.R.B. cases to put a temporary stop to this practice.

When the N.L.R.B. held elections to determine collective bargaining agents for the Texas Company ships, the N.M.U. was certified by an 85% majority. Did the Texas Company play fair and re-hire the 85% of their old employees whom they suspected of belonging to the N.M.U.? We have positive proof that the Texas Company at Port Arthur alone went out of their way to discriminate against N. M. U. employees by hiring 85% non-union men. This is a flagrant violation of the Wagner Act and all of its provisions.

Matters have reached a point in the Texas Company where officials are going through the plants and refineries and asking all ex-seamen employed there to act as strike-breakers on the ships should NMU demand their just rights under the Wagner Act. We call upon all Texas Company ships to adopt a program that will enable us to get written assurances that the Texas Company will live up to their verbal agreements and that they will dispense with all unfair labor practices.

A program should be adopted on your ship to:

(1) Elect from your ship or authorize a representative from another Texas Company Ship to act on a negotiating committee (and with the full sanction of the District Committee of the NMU)

(Testimony of J. Gordon Rosen.)

to bargain collectively for a written guarantee of non-union discrimination and that the best standards in the industry will be recognized aboard Texas Company ships.

(2) Send letters and telegrams immediately to the head office of the Texas Company requesting that NMU delegates be allowed aboard Texas Company ships to settle disputes that are now creating a great deal of irritation aboard the Texas Company ships.

(3) After the biased action of the Texas Company in the past it is only fair to former employees who voted 85% for the N. M. U., that no new members be allowed aboard the Texas Co. ships without an N. M. U. book, in order to maintain this N.L.R.B. ratio.

100% N. M. U. Crew,

S/S Washington.

Deck Delegate,

FELIX W. ZINKIEWYCZ,

Engine Delegate,

JACK KEANE,

Steward Dept. Delegate,

CECIL McDONALD,

Ship Delegate,

GORDON ROSEN.

Q. (By Mr. Martin) Mr. Rosen, have you talked with anybody who has said that he saw

(Testimony of J. Gordon Rosen.)

a copy of this letter on board [240] Texas Company ship? A. Yes, I did.

Q. Who was that person or persons?

A. Able seaman by the name of Morgan on the SS "Louisiana".

Q. What did he say?

A. He said he had seen that letter.

Mr. Williams: We object to hearsay.

Trial Examiner Myers: Read question and answer.

(Question and answer were read by the reporter.)

A. He said he had seen the letter, and brought it to the attention of the ship's delegate, a man by the name of C. R. Shaw.

Q. Where did he see the letter?

A. On board the SS "Louisiana."

Q. Pinned up somewhere?

A. He said it was in the mess room, but he didn't say pinned up, or what condition it was in.

Q. On the bulletin board in the mess hall?

A. He didn't state that.

Q. He said he saw it?

A. Yes, sir. He said Delegate, C. R. Shaw had it. He had several of them.

Trial Examiner Myers: I will see if he connects it up.

Q. (By Mr. Martin) Any others?

A. Yes, sir, another seaman by the name of George Hart, [241] on this same ship.

Q. This is the same George Hart who was also on the "Nevada"? A. Yes, sir.

(Testimony of J. Gordon Rosen.)

Q. Quartermaster Hart?

A. He was quartermaster on the "Nevada".

Q. What did he say?

A. He said: "I saw your letter that you sent out. I think it was a very good letter." That is the only comment he made at that particular time.

Mr. Williams: We renew the objections, and ask that it be stricken.

Trial Examiner Myers: I will strike it out.

Mr. Davis: Mr. Examiner, I see no reason why that type of evidence cannot remain in. It certainly shows union activity. I don't know whether the inference can be drawn that officials on board this particular ship saw this notice or not, but if the inference cannot be drawn then certainly it does not hurt the respondent.

Trial Examiner Myers: Well, the testimony is that somebody told him that they saw it on board ship. I will stand by my original ruling and strike it.

Q. (By Mr. Martin) Mr. Rosen, have you worked for The Texas Company since July 14, 1938?

A. No, I have not.

Q. You have not worked for The Texas Company since July 14, 1938? [242]

A. I have not.

Q. What was your rate of pay on the SS "Washington"?

A. Eighty-five dollars a month, plus overtime.

Q. Is that in addition to meals and room aboard the boat?

(Testimony of J. Gordon Rosen.)

A. That is in addition, subsistence, so called.

Q. And all of the salaries you have mentioned with respect to other boats you have worked on, are in addition to room and meals?

A. They are.

Trial Examiner Myers: Do you get free meals and board while you are on board?

A. Yes, sir, at all times, and in all ports.

Q. That is true about each and every port?

A. Yes, sir.

Q. Have you been employed elsewhere since the 14th of July, 1938? A. I have not.

Q. Have you received monies from any government, state or municipality——

A. I have not.

Q. By way of unemployment relief, W. P. A., or social security?

A. Seamen are not eligible to social security.

Q. Did you receive it? A. No, sir.

Trial Examiner Myers: Any other questions?

[243]

Q. (By Mr. Martin) Mr. Rosen, do you wish to go back to work for The Texas Company, Marine Division?

A. Yes, sir. I registered for that purpose with the Seamen's Church Institute on the Texas list.

Q. Have you been called?

A. No, sir, I have never been called.

Q. Will you explain just briefly the procedure at the Seamen's Institute?

A. Well, according to their own rules——

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Whose rules?

A. The Seamen's Church Institute. Those rules are formed, the Seamen's Church Institute, so called, those rules are formed and the man that is there the longest is supposed to have the number one position on The Texas Company list, if he has had previous service with that company. The next man with the next amount of service gets number two position.

Mr. Williams: We move to strike the answer, the question and the answer, especially the answer, for the reason that there is no showing made that those rules bind the respondent in any manner shape or form.

Trial Examiner Myers: Well, the testimony is that if they want a seaman, they call up the Seamen's Church Institute. Now, the question is how the Seamen's Church Institute works.

Mr. Williams: The rules would be the best evidence. We want to make the exception that the respondent would not be [244] bound by any rules that the Seamen's Church Institute might have.

Trial Examiner Myers: Let's go along.

Mr. Martin: Mr. Examiner, to avoid possibly any discussion of the inner-working of the Seamen's Church Institute, we simply want to show that the witness tried to go back to work, and failed.

Trial Examiner Myers: I have ruled.

Mr. Williams: Note our exceptions.

Trial Examiner Myers: I deny the motion.

(Testimony of J. Gordon Rosen.)

Mr. Williams: Note our exception.

Q. (By Mr. Martin) Mr. Rosen, is there a separate list for The Texas Company ships?

A. Yes, sir, there is.

Q. A separate list? A. Yes, sir, there is.

Q. From your testimony, I understand that the top man on the list has the first chance at a job, if he qualifies for the job.

A. Yes, sir, he is supposed to.

Q. And then if he accepts it, the second man becomes the first man on the list? A. Yes, sir.

Q. And so on? A. Yes, sir. [245]

Trial Examiner Myers: How do you become top man?

A. Well, the man on top, if he ships out is removed from the list. He might leave town, and then he is removed from the list, because he has to call in every Monday morning from eight to twelve. That is a Texas Company rule. If he is not there at any time, he is dropped from the list; except the men on relief trips, I believe, are supposed to be allowed to miss, I believe, two roll calls. [246]

Q. If the No. 1 man on the list is offered a job and he refuses it, does he remain on top of the list?

A. Ordinarily he does.

Q. And the second man on the list has the crack at the job? A. Yes.

Q. Now have you ever been top man on the list for The Texas Company ships at the Seamen's Institute since July 14, 1938?

(Testimony of J. Gordon Rosen.)

A. Not at the very top, no, sir.

Q. What is the highest you have been on that list?

A. I was No. 18 on the list about three weeks ago. Now my number is about 8.

Q. Have men below you on that list been hired during the period your name has been on it for service on Texas Company ships?

A. Yes, sir, they have.

Q. Able-bodied seamen?

A. Able-bodied seamen.

Q. Has your name first been called?

A. My name was never called.

Q. Your name was never called?

A. No, sir.

Trial Examiner Myers: Did you make any inquiries why your name was not called?

A. I did. [247]

Q. Of whom did you make inquiries?

A. The man that is supposed to do the shipping that calls us in there, in general charge of the office. His name is Dave.

Q. Seamen's Church Institute?

A. Yes, sir.

Q. What did he say?

A. He said—there was another man there first. We were both skipped. The other man asked, "Has my name been dropped off the list?" And he said: "I don't know anything about that. You will have to see Mr. Meyers," and turned away. I asked him

(Testimony of J. Gordon Rosen.)

if Mr. Meyers refused to ship me; and he says: "I don't know. You will have to see Mr. Meyers about that."

Q. And then he called the name of somebody below you?

A. Before that he had called the names out. He went on down the list until he got to the name of Rufus Andrews. He skipped him, and he called the name of a man, able seaman, between Rufus Andrews and myself; and he skipped me, and he called the name of the man below me, and he wasn't there; and the next man below me who was there, John Smith, took the job.

Q. Able-bodied seaman?

A. Able-bodied seaman.

Q. What boat? A. "Alabama". [248]

Q. Do you know the approximate date?

A. It was Saturday before Labor Day, I believe. It was on Saturday morning preceding Labor Day.

Q. 1938? A. Yes, sir.

Q. After this instance did you speak to Mr. Meyers, or attempt to?

A. I tried to call him up, and he wouldn't answer.

Q. This is Mr. G. E. Meyers?

A. Yes, sir.

Trial Examiner Myers: What do you mean by he wouldn't answer?

A. I called him up on the phone, and started to mention my name, and he hung up the receiver.

(Testimony of J. Gordon Rosen.)

Q. (By Mr. Martin) Were you talking with him? A. Yes, sir.

Q. Not his secretary? A. No, sir.

Q. He hung up while you were talking?

A. He did.

Q. Did you then go to his office?

A. No, sir.

Q. You considered you were not wanted?

A. Well, I didn't know what was going on.

Q. Have you made any other attempts since July 14, 1938, to [249] get a job with The Texas Company, Marine Division? A. Yes, sir.

Q. What attempts?

A. I called up Captain Hand.

Q. About when? A. About July 16.

Q. Did you speak with Captain Hand personally?

A. Yes, sir, I did.

Q. What was said in that conversation?

A. I said: "Captain Hand, I was fired off the 'Washington', and you said you would look into it."

He said: "Yes."

I said: "You know they have made no attempt to do anything about it."

And he said: "I don't know anything about that."

And I said: "You know I was discriminated against."

And he said: "I never said anything like that."

I said: "Well, I filed a complaint with the Labor Board."

(Testimony of J. Gordon Rosen.)

And he said: "That is in the hands of the New York office. They are over my head."

And I said: "How about getting a job back again?"

And he said: "I will look into it again," and hung up.

Q. Have you called him since?

A. No, sir, not since.

Q. Mr. Rosen, are you registered on the shipping list at the [250] National Maritime Union, Port Arthur Branch, Hall?

A. Yes, sir.

Q. Have you been so listed since July 14, 1938?

A. Yes, sir, I have.

Q. Mr. Rosen, have you worked for any other company since July 14, 1938?

A. No, sir, I never have.

Q. Have you had any occupation on land——

Trial Examiner Myers: He said he has not received any money whatsoever since the 14th of July. I asked him.

Q. (By Mr. Martin) Are you able to work at present?

A. Yes, sir.

Q. Physically able?

A. Yes, sir.

Q. During that entire period since July 14, 1938, you have been able?

A. Yes, sir.

Q. Do you know what your overtime average is on each of the three Texas Company boats from which you have been discharged?

A. It probably was more on the "Nevada" than on any other ship, because the "Nevada" after I

(Testimony of J. Gordon Rosen.)

was fired off of her went into dry dock. They cleaned the tanks and made a great deal of additional overtime cleaning tanks. However, I don't know approximately the exact amount they made.

Q. Could you make an estimate of the average on the three [251] ships?

A. The average amount of overtime on the ship?

Q. Yes, the average amount of your overtime on the three ships.

A. The average amount of overtime amounted to between seven and ten dollars a month.

Mr. Martin: Your witness.

Mr. Van Dusen: Mr. Examiner, this witness has been on the stand practically all day, and has attributed a lot of statements to many individuals. I would like, with your permission, the privilege of cross examining him tomorrow, if Mr. Davis is willing. I think it would facilitate matters. I would have to proceed perhaps very slowly otherwise.

Trial Examiner Myers: Off the record.

(Discussion off the record.)

Trial Examiner Myers: Then do you withdraw your request?

Mr. Van Dusen: Yes, sir. May I have a few minutes recess, please?

Trial Examiner Myers: Yes, sir.

(Short recess.)

Cross Examination

Q. (By Mr. Van Dusen) Mr. Rosen, you say that you have been a seaman for ten years, approximately ten years?

(Testimony of J. Gordon Rosen.)

A. Approximately, yes, sir.

Q. And an A. B. for approximately six years?

[252]

A. Yes, sir.

Q. So that you became an A. B. some time during the year 1932? Is that correct, this being 1938?

A. Approximately, yes, sir.

Q. Now you testified that since 1935 you were on three ships of The Texas Company, the "Nevada", "California" and "Washington"?

A. Yes, sir.

Q. You were on the "Nevada" twice?

A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Now your first trip on the "Nevada" was approximately, according to your testimony, October 22, 1935, is that correct?

A. About that time, yes, sir.

Q. And expired February 2, 1936?

A. Approximately, yes, sir.

Q. On that trip you signed the customary shipping articles, did you not?

A. Yes, sir. They were a little different to the ones that they have in effect now.

Q. Now when you left the SS "Nevada" on February 2, 1936, you left of your own accord, that is correct, is it not? A. Yes. [253]

Q. You were not employed on a Texas Company ship, or you did not sign shipping articles on a Texas Company ship, until June 30, 1937, when you

(Testimony of J. Gordon Rosen.)

signed articles on the SS "California", is that correct? A. Yes, sir.

Q. Now there is approximately 17 months interval there. What were you doing in that interval?

A. I was on strike about four months of that time.

Q. Suppose you start with your leaving the SS "Nevada" February 2, 1936. I believe you said you left at New Orleans, is that correct?

A. Yes, sir.

Q. What did you do?

A. I shipped on the Mississippi Shipping Company SS "Afel", and later changed—

Q. How long were you with that company?

A. Approximately six months.

Q. Approximately six months?

A. Yes, sir.

Q. Then you say for a portion of that time you were on strike? A. Yes, sir.

Q. In connection with that company?

A. No, sir.

Q. Well, did you voluntarily leave the employ of that [254] company? A. I did.

Q. Were you hired on the vessel of any other company? A. I was.

Q. What vessel?

A. The SS "Fairport", Waterman Steamship Company.

Q. How long were you with that company?

A. Approximately two months.

(Testimony of J. Gordon Rosen.)

Q. And then did you leave that vessel?

A. Yes, sir.

Q. Of your own accord?

A. I went on strike.

Q. For how long were you on strike?

A. Until February 4, 1937.

Q. 1937? A. Yes, sir.

Q. And then where were you employed, if at all?

A. I was unemployed until about March 3, 1937, and I joined the SS "Point Caleta" of the Swayne & Hoyt Steamship Company.

Q. And how long were you with that company?

A. Three and a half months.

Q. Three and a half months? A. Yes, sir.

Q. That takes you to about May, 1937?

A. June, 1937. [255]

Q. And then did you quit that vessel of your own accord? A. I did.

Q. Were you reemployed on any other vessel?

A. I went on The Texas Company ship.

Q. And that was on June 30, 1937?

A. Yes, sir.

Q. How did it happen that you signed articles on the SS "California"; what were the circumstances, where did you apply?

A. I went down to the Seamen's Institute. He said, "Where have you been all this time?"

Q. Who said that?

A. Dave, the man that does the shipping.

Q. You were put on the list at the Seamen's Institute? A. Not on the Texas Company list.

(Testimony of J. Gordon Rosen.)

Q. You were put on the list? A. Yes, sir.

Q. Did you ask to be put on The Texas Company list? A. I did.

Q. And he didn't put you on? A. No.

Q. How long was it before you obtained employment after you were put on the list?

A. About one day after I was put on the open list. There was a shortage of A. B.'s at that time.

[256]

Trial Examiner Myers: Is there a shortage of A. B.'s at the present time?

A. No, there is not.

Mr. Van Dusen: Apparently not. Yesterday Mr. Davis asked me to bring in copy of the forms of shipping articles used for foreign trips, and also for coastwise. I have these here.

Q. I show you shipping articles dated Port Arthur, June 29, 1937, and ask you to look over the list and see if your signature is on there.

A. Yes, sir, it is right here.

Q. Those are shipping articles you signed at the time you hired on the SS "California"?

A. No, I don't believe I signed them until the next day?

Q. It covers the trip? A. Yes, sir.

Q. On or about June 29, 1937? Is that correct?

A. Yes, sir.

Q. These shipping articles, these are what you call intercoastal?

A. No, sir, those are coastwise articles.

(Testimony of J. Gordon Rosen.)

Q. By intercoastal I mean from east to west, Atlantic to Pacific.

A. These are not intercoastal shipping articles.

Q. Aren't they signed before a Commissioner?
[257]

A. No, sir, they are not.

Q. I ask you if these shipping articles do not provide, that they read Port Arthur, Texas, to Baltimore, Maryland, and to be paid off at Port Arthur, Port Neches, or Sabine District, and such other ports and places, at any port of the U. S. East Coast as the master may direct, and back to final port of discharge, not to exceed two calendar months?

A. I believe that is written in there.

Mr. Van Dusen: I will ask that this be marked for identification.

(Thereupon the document above referred to was marked as Respondent's Exhibit No. 1 for identification.)

Q. I show you shipping articles dated Port Arthur, July 17, 1937, and ask you if you signed those shipping articles?

A. There seems to be some mistake here. This name is scratched out, and my mother's name is written over there.

Q. That is your name right here?

A. Yes. My name is over here. But in the place where my permanent address is given, we have the next of kin, and another name has been inserted and

(Testimony of J. Gordon Rosen.)

scratched out, and my mother's name put over to the extreme outer edge.

Q. All I am asking is whether you signed these particular shipping articles?

A. Yes, sir, that is my signature over here.

Mr. Van Dusen: I will ask that these be marked for [258] identification.

(Thereupon the document above referred to was marked as Respondent's Exhibit No. 2 for identification.) [259]

Q. (By Mr. Van Dusen) Didn't you testify that you gave your mother's address in Wisconsin in the shipping articles? A. I did.

Q. Isn't that what appears in these shipping articles? A. Well, not in the proper place.

Q. Well, it is on there, isn't it? A. It is.

Q. Now, I show you shipping articles dated Port Arthur, August, 1937, and ask you if you signed those shipping articles?

A. Yes, that is my signature.

Mr. Van Dusen: I ask to have it marked for identification.

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 3" for identification.)

Q. (By Mr. Van Dusen) I show you shipping articles dated Port Arthur, August 21, 1937, and ask if you signed those.

A. Yes, that is my signature.

(Testimony of J. Gordon Rosen.)

Mr. Van Dusen: I ask that this be marked for identification.

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 4" for identification.)

Q. (By Mr. Van Dusen) Now, you testified on direct examination that you were on the SS "California" from June 30, 1937, [260] to September 21, 1937?

A. Not, till September 21.

Q. Or September 19? Which was it?

A. Approximately on or about the 19th.

Q. On or about? A. Yes, sir.

Q. Now, these are the various shipping articles covering that period of time, isn't that correct?

A. That is right.

Q. In other words, Port Arthur was the usual pay-off point, was it not?

A. It was.

Q. And at Port Arthur when you were paid off you signed new articles?

A. That is right.

Q. Now, after you left the SS "California" on or about September 19 or 18, 1937, where did you go?

A. I registered down at the Seamen's Institute.

Q. On The Texas Company list?

A. On The Texas Company list.

Q. Did you register with the N. M. U.?

A. Yes, I registered with the N. M. U.

Q. Did you get a job?

A. No, I didn't. Not on a Texas Company ship.

(Testimony of J. Gordon Rosen.)

Q. Did you get a job on any other ship?

A. Yes, a Gulf Company ship. [261]

Q. About what date?

A. Oh, several days later.

Q. Several days after you registered, is that correct?

A. Yes.

Q. Did you get a job as an A. B. seaman?

A. As an A. B. seaman.

Q. Do you know the name of the ship?

A. The "Gulfbelle."

Q. Did you sign shipping articles on that ship?

A. I did.

Q. Was that a coastwise or a foreign voyage?

A. Coastwise.

Q. How long were you on that ship?

A. Approximately two months.

Q. Approximately two months?

A. Yes, sir.

Q. What was your rate of pay on that ship?

Mr. Davis: Object to that as being immaterial.

Mr. Van Dusen: Just a minute, Mr. Examiner.

Trial Examiner Myers: What is the trouble?

Mr. Van Dusen: He is objecting to it.

Trial Examiner Myers: Who is?

Mr. Van Dusen: Mr. Davis is.

Trial Examiner Myers: I didn't hear the objection. I am sorry.

Mr. Van Dusen: Aren't you objecting, Mr. Davis? [262]

Mr. Davis: Yes, I am objecting. He is asking

(Testimony of J. Gordon Rosen.)

for his rate of pay on a ship not owned by The Texas Company.

Mr. Van Dusen: Now, let me make this statement, Mr. Examiner.

Trial Examiner Myers: Well, the objection is overruled. Go ahead.

Mr. Van Dusen: Thank you.

Q. (By Mr. Van Dusen) Your rate of pay on the Gulf ship.

A. \$85 per month, plus overtime.

Q. What were you getting on the "California"?

A. \$80 a month, without overtime.

There is a correction there. \$80 a month on the "Gulfbelle" with overtime.

Q. \$80 a month on the "Gulfbelle" with overtime?
A. With overtime.

Q. What were you getting on the "California"?

A. \$80 a month, without overtime.

Q. And you say the overtime amounts approximately to \$7 per month? Was that your estimate on direct examination?

A. That is my estimate, yes, sir.

Q. You were on that Gulf ship for two months?

A. I was.

Q. Did you quit that ship? A. I did.

Q. You were not discharged?

A. No, I was not. [263]

Q. Did you then seek employment on some other ship?

A. Yes, I did. I registered at the Seamen's Institute again on The Texas Company's list.

(Testimony of J. Gordon Rosen.)

Q. Why didn't you stay on the Gulf ship?

A. The "Gulfbelle"?

Q. Yes.

Mr. Davis: I object to that as being immaterial.

Trial Examiner Myers: If you are making an objection I wish you would make it a little louder. What was it you said? I didn't hear you.

Mr. Davis: I object to that as being irrelevant and immaterial as to why he quit.

Trial Examiner Myers: Overruled.

A. I wanted a warmer run. The "Gulfbelle" was running to Providence and it was getting late in the year and that ship makes about sixteen knots an hour and it was very uncomfortable on that ship.

Q. (By Mr. Van Dusen) How long after you left the "Gulfbelle" did you obtain employment on some other ship? A. Approximately a week.

Q. On what ship were you then employed?

A. The "Gulfgem."

Q. Did you sign shipping articles on that ship?

A. I did.

Q. How long were you on that ship?

A. Approximately two months. [264]

Q. Approximately two months?

A. Yes, sir.

Q. Were you an A. B. seaman on that ship?

A. I was.

Q. What was your rate of pay?

A. \$80 a month, plus overtime.

(Testimony of J. Gordon Rosen.)

Q. Did you quit that ship? A. I did.

Q. Voluntarily? A. Yes.

Q. Why did you leave that ship?

A. For the same reason I left the "Gulfbelle." She was going North and I didn't wish to go North on any ship.

Q. What was the approximate date you left that ship?

A. I will have to look at my discharge to get the exact date.

Q. Will you do that, please?

A. It was the first part of December.

Q. Of 1937? A. 1937. 12-23-37.

Q. Did you then register with the Seamen's Institute? A. I did.

Q. Did you register with the N. M. U.?

A. I did.

Q. And how long was it before you were employed on another ship? [265]

A. January 10, 1938.

Q. Was that when you signed shipping articles on the SS "Nevada"? A. I did.

Q. That was approximately two weeks, would you say, that you were not employed?

A. Closer to three weeks.

Q. Three weeks? A. Yes, sir.

Q. Did you make any effort to obtain employment elsewhere?

A. Only at The Texas Company and at the National Maritime Union hall.

(Testimony of J. Gordon Rosen.)

Q. You obtained no other employment at that time? A. No.

Q. And had no other source of income?

A. No.

Q. You signed the customary shipping articles on the SS "Nevada"? A. No, I didn't.

A. Not the customary articles.

Q. Well, I mean you signed shipping articles?

A. Yes, I did.

Q. Did that vessel make a coastwise trip at that time? A. No, it made a foreign trip.

Q. A foreign trip? [266] A. Yes.

Q. Where did it go? That was the trip where you went to Bilboa, Spain, and those points?

A. It went to three ports in Spain.

Q. Now, you said that you left the SS "Nevada" on or about July 18, 1938, is that correct?

A. I think the 19th is the correct date.

Q. The 19th?

A. Yes. I looked that up on my discharges.

Q. Or rather, April. I am sorry. April 18?

A. April 18.

Q. Now, how long were you unemployed between the time that you left the SS "Nevada" and the time you signed shipping articles on the SS "Washington"? A. Till June 1, 1938.

Q. When you left the SS "Nevada" did you register with the Seamens Church Institute?

A. I did.

Q. You did? A. I did.

(Testimony of J. Gordon Rosen.)

Q. Did you register with the N. M. U.?

A. I did.

Q. Did you obtain employment on any ship?

A. Yes, I did.

Q. What ship?

A. The SS "Washington." [267]

Q. I mean in that interval?

A. No, nothing in that interval.

Q. And there is approximately ten months there, is that right?

A. No, sir.

Q. Oh, I am sorry. One month. A little over a month?

A. About six weeks.

Q. And you were not employed on any ship during those six weeks?

A. I was not.

Trial Examiner Myers: If I may interrupt, what is the purpose, Mr. Rosen, of getting off one ship and then going down to the Seamens Institute and signing up on The Texas Company's list?

A. Well, I tried to get back with The Texas Company because they were unorganized and I felt as long as they were unorganized it was the duty of every member of the union to concentrate on that company until they did become organized.

Trial Examiner Myers: I am talking about when you got off the "California" and came back to Port Arthur. You quit your job there and went down to the Seamens Church Institute and signed on The Texas Company's list. What is the purpose of that?

A. Well, that is the only way I know of to ship on the Texas Company is to register on The Texas Company's list at the Institute. [268]

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: But you were on the boat and you say you quit voluntarily.

A. Not on the "California." I was fired off the "California."

Trial Examiner Myers: Well, take the "Nevada."

A. I got fired off the "Nevada" the second time.

Q. (By Mr. Van Dusen) What about the Gulf boats?

A. I quit off the Gulf boats, yes, sir.

Q. For the purpose of registering to get on a Texas Company boat? A. No, sir.

Q. Wasn't that the real reason?

A. No. For the purpose of employment.

Q. You wanted to organize the men on The Texas Company boats, didn't you?

A. If possible.

Trial Examiner Myers: I only asked the question with reference to getting off the different Texas Company boats and then going down and registering on The Texas Company list.

Q. (By Mr. Van Dusen) Well, now, at the time you signed articles on the SS "Nevada" on or about January 10, 1938, you got the employment through the Seamens Church Institute, is that correct? A. That is correct.

Q. Did they at that time ask you whether you were a member of the N. M. U.? [269]

A. No.

(Testimony of J. Gordon Rosen.)

Q. Did the Seamens Church Institute ask you that? A. No.

Q. Did any of the officials of The Texas Company ask you that? A. No.

Q. Did the captain or any of the officers of the ships ask you that question? A. No.

Q. Now, when you signed shipping articles on the SS "Washington" on or about June 1, 1938, you obtained the employment through the Seamens Church Institute, did you not? A. Yes.

Q. Did the Seamens Church Institute ask you whether you were a member of the N. M. U.?

A. No.

Q. Did they say that because you were a member of the N. M. U. you would not be hired?

A. You know, after all there is a Wagner Act.

Q. Well, "yes" or "no."

Trial Examiner Myers: Answer the question.

Q. (By Mr. Van Dusen) Did any of the officials of The Texas Company ask you whether you were a member of the N. M. U.? A. No.

Q. Did the captain or any of the officers of the ship ask you whether you were a member of the N. M. U.? [270]

A. Not at the time I came aboard the ship.

Q. Or at the time you signed shipping articles?

A. No.

Q. Now, during the interval that you left the SS "Nevada" for the second time on or about April 18 until the time you were on the SS "Washing-

(Testimony of J. Gordon Rosen.)

ton" you say that you made every possible effort to obtain employment?

A. What were those dates again?

Q. At the time you left the SS "Nevada", which is April 18, 1938, to the time that you signed shipping articles on the SS "Washington" on June 1, 1938?

A. Yes, I made every effort to obtain employment at that time.

Q. How do you obtain employment on the N. M. U. list? Do they have a list?

A. They do.

Q. How is that list prepared? How do they rank the men?

A. It is on a rotary system. The No. 1 man is the one that has been there the longest; attends the meetings.

Trial Examiner Myers: When you say "has been there the longest" what do you mean? I tried to get that before. You mean unemployed the longest?

A. That is right.

Trial Examiner Myers: And who has been registered the longest at the Seamen's Institute or at the N. M. U.? [271]

A. Yes.

Q. (By Mr. Van Dusen) Well, hadn't you been a member of the N. M. U. for a long time?

A. Yes, I have.

Q. Wouldn't you have been given preference under those circumstances?

A. No, sir.

Q. Why not?

(Testimony of J. Gordon Rosen.)

A. Because we ship on the democratic system. It don't matter how long a man has been in the union. As soon as he registers he is placed on the shipping list and when his time comes he is given an equal chance of employment with other members.

Q. Well, why was it you were not able to obtain employment in that approximately six or eight weeks?

Mr. Davis: I think that calls for possibly a conclusion.

Trial Examiner Myers: I overrule the objection.

A. Because shipping was slow. There was plenty of A. B.'s on the beach. Five Gulf Company ships had been laid up at that period of time.

Q. (By Mr. Van Dusen) Did you try to obtain employment through individual companies? Did you make application with individual companies? A. Only The Texas Company.

Q. No other company? [272]

A. No other companies.

Q. Just to the Seamen's Church Institute and the N. M. U. list? A. Yes.

Q. That is the only effort you made to obtain other employment during that period of time?

A. During that period of time.

Q. The reason why you didn't apply to other companies was that you really wanted to get on The Texas Company's ships, isn't that the real reason?

(Testimony of J. Gordon Rosen.)

A. Yes, that was the real reason. I wanted to try to get back on a Texas Company ship.

Q. Now, Mr. Rosen, the charges against The Texas Company which you filed with the Labor Board were filed some time in April of this year shortly after you left the SS "Washington", isn't that correct?

A. I filed them through the attorney for the union. I don't know what date it was filed.

Q. You filed them with the attorney for the union shortly after you left the SS "Washington"?

A. Yes.

Q. At that time your charges were to the effect that you were unlawfully discharged from the SS "Nevada", isn't that correct?

A. Did you say "charges" or "charge"? [273]

Q. The charges you filed had to do with the SS "Nevada", the charges which you filed with the attorney for the union in April shortly after you left the SS "Nevada"?

A. No, they had to do with the "California" also.

Q. Now, isn't it a fact that after these charges had been filed you signed shipping articles on the SS "Washington" of The Texas Company?

A. That is right.

Q. Isn't that correct?

A. That is right.

Q. Then when you left the SS "Washington" you filed additional charges with the attorney for the union, is that correct?

A. I did.

(Testimony of J. Gordon Rosen.)

Q. Now when did you file those charges, the amended charges, with your attorney?

A. The agent and delegate of the union took care of that matter.

Q. I mean approximately what date?

A. Immediately after I was discharged off the "Washington."

Q. Now isn't it a fact that at the time you filed these amended charges you had only mentioned your leaving the SS "Nevada" and the SS "Washington"? You had only mentioned——

A. (Interrupting) No, sir.

Mr. Van Dusen: I want to ask Mr. Davis now, Mr. Examiner, [274] if he will concede that the alleged discharge from the SS "California" was mentioned for the first time in the complaint which was served on The Texas Company and was not mentioned in the notices which the Regional Director sent to The Texas Company prior to the issuance of the complaint.

Trial Examiner Myers: Well, all the testimony so far, Mr. Van Dusen, was that this witness filed charges with his attorney; that is, the attorney for the union. There is nothing in the record showing what either he or the union filed with the Board.

Mr. Van Dusen: I realize that, but in order to save time I thought that perhaps I could get Mr. Davis to stipulate on certain letters sent by the Regional Director as their preliminary to the filing of formal charges.

(Testimony of J. Gordon Rosen.)

Mr. Combs: Mr. Examiner, I don't see what materiality or relevancy this has; whether it be true or untrue, the fact is that it has been testified that it was handled through his attorney, and whether or not what Mr. Van Dusen says is true has no probative value whatsoever.

Mr. Van Dusen: The Board, as I understand it, is acting for the seamen. Under the act it has the power to investigate the charges and if it finds that there is cause for the issuance of a complaint, it issues the complaint. The Board's attorney represents the seamen who are discharged. Now I think it is pertinent on this question to have the correspond- [275] ence leading up to the filing of the complaint and all I am asking Mr. Davis to do is to permit me to put into the record the letters from the Regional Director. I will let them speak for themselves.

Mr. Wright: I don't know what the facts are. If the facts are what Mr. Van Dusen says they are, that is all right with us. I think the record ought to reflect, however, that this man had nothing to do with the filing of the charges as such; that his union agent filed the charges; that his union attorney handled them for him; and that he is therefore not in a position to know the facts. Any interrogation of him with reference to the facts I submit is out of reason, because he has no foundation of fact to base any testimony on.

Trial Examiner Myers: Well, let's wait until

(Testimony of J. Gordon Rosen.)

we hear from Mr. Davis to see what he has to say about it. I think we had better have this discussion off the record from now on.

(Discussion off the record.)

Trial Examiner Myers. Are you ready to proceed, gentlemen?

Mr. Davis: Let the record show that while I cannot see the materiality of the request, I have been requested by counsel for respondent to state for the record when the fact that Gordon Rosen was discharged from the ship SS "California" [276] on September 19 or about that date, 1937, was first brought to the attention of the Sixteenth Region of the National Labor Relations Board. The file reveals that Mr. Rosen first brought that fact to the attention of Field Examiner J. F. Lebus on May 24, 1938, and that the first charge received by the Sixteenth Region of the National Labor Relations Board setting out that date was received and was stamped on August 6, 1938.

Let the record further show that the first charge involving the discharge of Gordon Rosen was received in the office of the Sixteenth Region of the National Labor Relations Board on April 23, 1938.

Mr. Combs: Mr. Examiner, we are not objecting to that because we don't consider it a matter of sufficient importance to take up time in argument, but unless our silence would be taken as acceptance that it is admissible, I want to say that we don't think it is material. [277]

(Testimony of J. Gordon Rosen.)

Mr. Van Dusen: Well, now, I will have, Mr. Examiner, to take exception to that statement and to reply to it.

Trial Examiner Myers: Well, you have all the information that you want.

Mr. Van Dusen: Well, he said he didn't think it was worth taking up time on.

Trial Examiner Myers: He said he didn't want to take the time to make objection to it.

Mr. Van Dusen: He said he didn't think it was worth the time. I want to say that it is important from our standpoint. This charge is dated September, 1937, and the Board learns about it for the first time in 1938. I think it is worthwhile and I think it is important to my client to show that.

Mr. Combs: Mr. Examiner, I think it shows great forbearance.

Q. (By Mr. Van Dusen) Now, Mr. Rosen, when did you first say you brought these charges to the attention of the attorney for the N. M. U.?

A. I mentioned the fact that I was fired off the "California" and brought this to his attention immediately following my discharge from the SS "Nevada". I mentioned it in regard to my service with The Texas Company; in that respect.

Q. And that was approximately what date?

Trial Examiner Myers: Well, look at your discharge papers? [278]

A. It was about four or five days later.

Mr. Wright: We would like to object to this.

(Testimony of J. Gordon Rosen.)

However, we have no serious objection except that it is immaterial to the case, no matter when he brought the matter to the attention of his attorneys.

Mr. Van Dusen: I think it is important on the question of laches.

Trial Examiner Myers: We have all the information and I will overrule the objection, but I don't think we should go into it further. Do you want to go into it further, Mr. Van Dusen?

Mr. Van Dusen: I do want to ask one or two questions on that point, Mr. Examiner.

Trial Examiner Myers: All right, go ahead.

Q. (By Mr. Van Dusen) You were a member of the N. M. U. since May of 1937?

A. Officially a member.

Q. Why is it you didn't bring the discharge from the SS "California" to the attention of your attorney prior to the date you mentioned?

A. I wasn't aware of my rights under the Wagner Act at that time.

Q. When did you first learn of your rights under the Wagner Act?

A. Oh, approximately six months later. [279]

Q. Didn't you testify that while on the SS "Nevada" on the trip beginning January 10, 1938, that you engaged in union activities aboard that ship?

A. On this trip?

Q. You were on the SS "Nevada" from January 10, 1938, to April 18, 1938, were you not?

(Testimony of J. Gordon Rosen.)

A. Yes.

Q. And you have testified today that you were engaged in union activities on board that ship?

A. I was.

Q. Isn't that correct? A. Yes, sir.

Q. Then you were aware of your rights under the Wagner Act?

Mr. Davis: This is argumentative. That is argumentative and does not necessarily follow.

Mr. Wright: Mr. Examiner, I would like to point out for the gentlemen's benefit that I don't believe the record will reflect that on the first trip this man made on the "Nevada" that he made any statements with respect to his labor activities or his union activities. His statements were with respect to a special job he had done on that ship.

Mr. Van Dusen: I think he spent several hours talking about that. May I have a ruling on my question, Mr. Examiner?

Trial Examiner Myers: I will overrule the objection. Do you understand the question, Mr. Witness? Would you like [280] to have it read to you?

A. Yes, I would like to have it read to me. ...

Trial Examiner Myers: Read the question to him, Mr. Reporter.

(The last question was read.)

A. At what particular time?

Q. (By Mr. Van Dusen) While you were on the SS "Nevada"?

A. I was aware of my rights while I was on the SS "Nevada".

(Testimony of J. Gordon Rosen.)

Q. Yet you hadn't filed your charges at that time?

Mr. Wright: I object, Mr. Examiner, for the reason that all this stuff is argumentative. The last three questions are especially argumentative.

Trial Examiner Myers: He is testing the veracity of the witness. I will overrule the objection.

Mr. Van Dusen: Will you read the question, please, Mr. Reporter?

(The last question was read.)

A. No, I didn't file them until I was discharged from the SS "Nevada".

Q. Now, in your testimony given during the day you testified and you said that from time to time you talked to the captains of those various ships and with the officers and also with Mr. Hand regarding complaints that you and other seamen had, is that correct? A. I did. [281]

Q. Now, on some occasions the captain and Mr. Hand complied with your requests, isn't that the case?

A. I think very few times did they comply.

Q. Well, they did at times comply with your requests? At Bilboa, Spain, for instance after you talked to the captain he granted shore leave, did he not; that is, Captain Swanson?

A. About an hour later.

Q. Well, I mean he did? A. Yes.

Q. Although at first he was denying shore leave?

(Testimony of J. Gordon Rosen.)

A. He said he wouldn't give us shore leave until the military authorities told him we could have it.

Q. At other times the captain and the officers of the ship refused to grant your requests, isn't that correct? A. That is right.

Q. But during this period you were able to see and talk to the officers of the ship, were you not?

A. No, sir.

Q. What is that? A. No, sir.

Q. On the various occasions that you mentioned this morning they talked to you, didn't they?

A. They told me they wouldn't recognize me as a delegate——

Q. (Interrupting) Please answer the question. I said did they talk to you? I said did they talk to you on the occasions [282] that you mentioned?

A. On the first part, yes.

Q. I mean the occasions that you mentioned during all your testimony. The captain and the officers talked to you, didn't they? A. Oh, yes.

Q. They didn't throw you out, did they?

A. Practically.

Trial Examiner Myers: What you mean is that they would talk to you as an individual and not as a delegate? Is that what you mean?

A. That is right.

Q. (By Mr. Van Dusen) They talked to you on occasions when you said you were representing the crew?

(Testimony of J. Gordon Rosen.)

A. On certain occasions they would and on certain occasions they would not.

Q. I say on the occasions to which you testified?

A. Yes.

Q. On certain occasions the conversations lasted for fifteen or twenty minutes, did they not?

A. Sometimes they did.

Q. Because you talked that long in telling about it in your testimony. So that they were willing to listen to your grievances?

A. On certain occasions they were and other occasions they [283] weren't.

Q. You didn't mention any occasions when they weren't on your direct examination? A. I did.

Q. Well, when?

A. Captain Bergman absolutely refused to recognize me as the delegate, elected representative of the crew, and Captain Hand the same thing.

Q. On what occasion?

A. Captain Bergman, I will have to refer to my notes for that.

Mr. Wright: Mr. Examiner, I would like to point out that the record itself speaks for itself.

Mr. Van Dusen: Well, I have the right to cross examine the witness. You are not going to deny me that right, are you?

Trial Examiner Myers: Well, gentlemen, don't get into any discussion.

Mr. Van Dusen: He has been on the stand for six hours and he has done lots of testifying.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Now, Mr. Wright, have you an objection?

Mr. Wright: Yes, sir. I am doing my very best to make it. He asked the gentleman what he testified to. I say the record itself speaks for what he testified to.

Trial Examiner Myers: This is cross examination, Mr. [284] Wright. I will have to overrule your objection.

A. On one particular occasion, on Thursday, June 9, we had a meeting and certain things were voted upon. Immediately after the meeting Zinkiewicz and myself went up to Captain Bergman and had the following conversation with him:

I said, "Captain, the union men of this ship have just had a meeting and Zinkiewicz was elected deck delegate and I was elected ship's delegate. We would like some information on several things."

Captain Bergman: "Well, I don't know nothing about any delegates. We don't recognize any unions on this ship. If you have anything to say as an individual or collectively, you can tell me about it."

Zinkiewicz then made his individual complaint and I made my individual complaint. He refused to recognize us as delegates on that occasion.

Q. (By Mr. Van Dusen) He listened to your individual complaints though, didn't he?

A. He did.

Q. Did the other officers listen to your individual complaints; for instance, Captain Swanson?

(Testimony of J. Gordon Rosen.)

A. Yes, I believe Captain Swanson did.

Q. And Captain Peterson on the "California"?

A. Yes.

Q. Did they ever refuse to talk to you in regard to indi- [285] vidual complaints?

A. I can't remember of any occasion, no, I can't remember any particular occasion.

Q. Well, take Captain Peterson, do you remember any occasion when he refused to listen to your individual complaints? A. Sir?

Q. Captain Peterson, did he ever refuse to listen to individual complaints on your part?

A. No, he didn't refuse that I know of.

Q. How about Captain Swanson?

A. Yes, Captain Swanson refused.

Q. On what occasion?

A. When I went up about the Cat Island overtime.

Q. Well, he talked to you about the overtime, didn't he? He told you he wouldn't allow it?

A. Yes, he told me he wouldn't allow it.

Q. But he did talk to you about it?

A. But he said, "Everybody that wants overtime come up there collectively."

Q. He talked to you? A. Collectively.

Q. He may have disagreed with you, but he talked to you? A. Collectively, yes.

Q. Any other occasion when Captain Swanson refused to listen to individual complaints? [286]

(Testimony of J. Gordon Rosen.)

A. Not any particular occasion that I know of.

Q. How about Captain Bergman?

A. Yes, Captain Bergman refused.

Q. On what occasion?

A. When Zinkiewycz went up to Captain Bergman and he asked him why——

Q. (Interrupting) No. I am talking about you now.

A. As an individual I don't believe I ever talked to Captain Bergman as an individual, except on this one occasion when I couldn't get any response as a delegate.

Q. Well, did you ever try to talk to him?

A. While I was a delegate I tried all the time and he recognized the fact.

Q. Well, if there was a complaint for the group then you had the same complaint too?

A. I was the spokesman for the group.

Q. I mean you had the same complaint, isn't that correct? A. No, no.

Q. Well, you didn't agree with the complaint, but you were making it for them?

A. It didn't necessarily mean that I was agreeing with the complaint, because some of the complaints were on behalf of other men, like the steward's department, the engine department, and the quartermasters.

Q. All right. Did he ever refuse to talk to you on any [287] individual complaints you had?

(Testimony of J. Gordon Rosen.)

A. Well, that would be a hard question, because I never went to him with an individual complaint.

Trial Examiner Myers: Did you go to him once about the toilets?

A. No, sir, that was not an individual complaint.

Trial Examiner Myers. You, yourself complained about it, didn't you?

A. No, sir. Zinkiewycz did. [288]

Trial Examiner Myers: Didn't you complain about the toilets being dirty and that the bedding was not changed often enough?

A. I tried to complain to him but he wouldn't listen to me as a representative.

Trial Examiner Myers: But as an individual did you make a complaint? He said, "Now as a delegate, I won't listen to you, but," he said, "if you have any complaint to make as an individual I will listen to you"? A. That is right.

Trial Examiner Myers: And that is the time you told him about the toilets?

A. I didn't tell him about the toilet. Zinkiewycz did. It is in the testimony.

Q. (By Mr. Van Dusen) You were there?

A. Yes, I was there.

Q. Is there any other occasion when he refused to listen to an individual complaint?

A. The only time is when Zinkiewycz went up to him that I know of.

Trial Examiner Myers: When Zinkiewycz was

(Testimony of J. Gordon Rosen.)

with you. Did Zinkiewicz ever go there alone without you?

A. Yes, he went there alone when he was fired.

Q. (By Mr. Van Dusen) Then you know of no other occasion when you had an individual complaint that Captain Bergman [289] refused to discuss it with you?

A. I don't remember any offhand, no.

Q. Now you say you were acting as ship's delegate?

A. That is right, on the SS "Washington".

Q. What is that?

A. On the SS "Washington", that is right.

Q. Not on the SS "Nevada"?

A. No, sir, not on the SS "Nevada".

Q. Now who selected you as delegate?

A. The crew at a regular meeting voted me in as a ship's delegate.

Q. Did the local Port Arthur branch of the N. M. U. authorize you to act as delegate?

Mr. Wright: I want to object to that for several reasons, one of which is that it is irrelevant and immaterial. The other reason is that the constitution of the organization speaks for itself and is now in evidence.

Mr. Van Dusen: Mr. Examiner, I think this is very important, because a great deal of stress in this testimony was placed on Mr. Rosen acting for a group and trying to talk with the captain and he said that the captain on numerous occasions said

(Testimony of J. Gordon Rosen.)

he did not recognize the union. Now we are getting toward the heart of the case and I think he ought to be obliged to answer that question.

Trial Examiner Myers: Have you anything to say, Mr. [290] Martin?

Mr. Martin: Mr. Examiner, we object on the ground that the only relevant evidence as to Mr. Rosen's authority to represent the group would be evidence concerning whether or not the officer of the ship with whom he discussed the matter asked him whether or not he had any authority. We consider all other questions as to his authority quite beside the point of the case, which is whether Mr. Rosen was discharged for his union activities, and has nothing to do with whether he had authority to do what he did if the officer did not question that authority.

Trial Examiner Myers: I will overrule the objection.

Can you answer the question, Mr. Witness? Can you remember the question? A. No.

Trial Examiner Myers: Mr. Reporter, please read the question to the witness.

(The last question was read.)

A. That is one of the duties of each bona fide member of the N. M. U.—

Q. (By Mr. Van Dusen) "Yes" or "no", Mr. Rosen.

Trial Examiner Myers: Do you understand the question? Were you selected by the Port Arthur

(Testimony of J. Gordon Rosen.)

Branch of the N. M. U. to represent it?

A. The Port Arthur group has nothing to do with my selection [291] as representative aboard that ship.

Trial Examiner Myers: That is all Mr. Van Dusen wants to know.

Mr. Van Dusen: That is all I want to know.

Q. (By Mr. Van Dusen) Do you know of your own knowledge when the election on The Texas Company ships took place?

A. Approximately.

Q. What was that date?

A. They started around the end of October and continued through——

Q. (Interrupting) What year?

A. 1937.

Q. No. I mean when did the election take place? When was the N. M. U., if you know, selected by the seamen as the exclusive bargaining agency?

A. It was announced in the official organ of the union in March of 1938.

Q. 1938? A. Yes, sir.

Q. That was prior to the time you were on the SS "Washington"?

A. Before I was on the "Washington".

Q. Is that right? A. Yes, sir.

Q. So that the N. M. U. was the exclusive bargaining agency [292] for the unlicensed seamen at the time you were on the SS "Washington", is that correct?

(Testimony of J. Gordon Rosen.)

A. They were the bargaining agency between the officials and the union.

Q. I say they were the exclusive bargaining agency for the unlicensed personnel?

A. They were certified, yes.

Q. And they represented the unlicensed personnel on all of The Texas Company fleet, isn't that correct?

A. No, I don't think so.

Q. Well, what did the N. M. U. represent? Just one ship?

A. No.

Q. How many ships?

A. That is the point. It is the duty of every member——

Q. (Interrupting) No, no. How many ships did the N. M. U. represent of The Texas Company fleet unlicensed personnel?

A. I don't quite get your point. The N. M. U. is the membership.

Q. The N. M. U. was not the exclusive bargaining agency for the unlicensed personnel?

A. It was certified, yes.

Q. Then they do represent the unlicensed personnel?

A. The membership of the N. M. U.——

Q. (Interrupting) The National Maritime Union represents the unlicensed seamen on The Texas Company ships, is that [293] correct?

A. In bargaining with the company officials.

Q. And that covers all of The Texas Company ships?

A. Yes, it does, I believe.

(Testimony of J. Gordon Rosen.)

Q. Now do you know approximately how many ships The Texas Company has?

A. About 28 deep sea vessels.

Q. Now when you were on the SS "Washington" no official of the N. M. U. had designated you to bargain with the captain or anybody else connected with The Texas Company, had they?

A. That is not the system under which we work.

Q. "Yes" or "no".

Mr. Wright: Mr. Examiner, I would like to have my objection to the immateriality of it.

Mr. Van Dusen: Oh——

Trial Examiner Myers: Well, go ahead. You say "oh". [294]

Mr. Van Dusen: This man talks about bargaining with the captain and the captain saying, "I am not recognizing any union." Now, maybe he doesn't have to recognize this gentleman.

Mr. Martin: Mr. Examiner, the issue is not whether he has to recognize anybody, but whether, if he doesn't want to recognize him as the delegate, he has a right to fire him.

Mr. Van Dusen: Then, under those circumstances, why did you put in that evidence?

Mr. Martin: You asked for it.

Mr. Van Dusen: I didn't ask for this evidence with reference to his talks with the various captains.

Mr. Wright: All I am objecting to is the immateriality of this business of authority.

(Testimony of J. Gordon Rosen.)

Mr. Van Dusen: I think it is very material.

Trial Examiner Myers: I think you are asking this witness to construe certain decisions of the Board.

Mr. Van Dusen: What is that?

Trial Examiner Myers: I say I think you are asking this witness to construe certain decisions of the Board.

Mr. Van Dusen: No, I am trying to find out what authority he has to speak as representative of the N. M. U., which was chosen as the exclusive bargaining agency. He says he was elected by the members of the crew of that particular ship. [295]

Mr. Martin: The issue is whether the man was discharged.

Mr. Van Dusen: I beg your pardon. You have other allegations in your complaint.

Trial Examiner Myers: Well, let Mr. Martin go ahead with his statement.

Mr. Martin: Now, as I understand it, any comments of the captain or of the mate with whom he talked as to his authority or lack of authority would be pertinent as indicating whether they did consider him as speaking for the group. If they did ask him whether he was representing the group and he replied that he was and then he was discharged, I would urge that as an indication that at least it was one of the reasons why he was discharged; that is for his union activities. If the captain or the mate did not ask him for his author-

(Testimony of J. Gordon Rosen.)

ity, I can't see why we should go into it here, because regardless of whether the man had the authority or not, certainly the penalty should not have been firing him. The penalty might have been to refuse to talk with him, but it certainly did not justify discharging the man.

Mr. Van Dusen: Now, Mr. Examiner, I would like to ask Mr. Davis if he is confining this charge solely to the discharges and is therefore withdrawing the allegation respecting passes and the general allegations in paragraph nine which state, “* * * and by other acts and conduct the [296] respondent has interfered with, restrained and coerced its employees in the exercise of their rights to self organization to form, join, or assist labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.” There are some general allegations. I am not sure that that is not going to be used to prove those allegations. That is an additional reason for offering the evidence.

Mr. Davis: By all means counsel for the Board is not withdrawing the allegations that Mr. Van Dusen quotes. We still feel, however, that the line of testimony that he has been delving into is irrelevant and immaterial. It appears to me that this is the first time, so far as I can determine, that the company has questioned authority of a union to select delegates on a ship. So far as I know, it is

(Testimony of J. Gordon Rosen.)

the first time that the constitution and by-laws of the Union have been in the possession of the company so that they could delve into them and come to the conclusion that the men didn't have the right to select delegates. So I am just wondering how they can go back now six months or a year and say that "We didn't believe then that these men had the right to select delegates." If they have evidence that they want to offer in the record to show that they believed then or that their masters believed then that these men didn't have authority to [297] represent the men, that is well and good and certainly I wouldn't register any objection.

Mr. Van Dusen: Are you finished, Mr. Davis?

Mr. Davis: Yes.

Mr. Van Dusen: As I understand it, Mr. Examiner, the Labor Act provides for collective bargaining and the selection of one agency to represent an entire group. Now, Mr. Rosen is not claiming in any of his testimony to represent all the seamen on all the ships of The Texas Company, but merely on the SS "Washington". Now, the Act gives an individual the right to talk to his employer, but if he is dealing collectively where an agency has been designated, that agency must speak, and I want to find out if he was designated by the agency.

Trial Examiner Myers: Well, as I understand it from your argument, Mr. Van Dusen, it is that the captain of these boats would have listened to Mr. Rosen's complaint as a delegate if the captain was

(Testimony of J. Gordon Rosen.)

satisfied that Mr. Rosen represented the Union. Is that right?

Mr. Van Dusen: That is right.

Trial Examiner Myers: As I understand the testimony, it is that irrespective of whether he was the local delegate, the captains would not speak to him.

Mr. Van Dusen: No, not if Mr. Rosen has the authority that Mr. Lawrenson had in New York. We dealt with Mr. Lawrenson. If Mr. Rosen has the authority to represent the [298] seamen and to speak for all the seamen as a bargaining agency we will deal with him.

Trial Examiner Myers: Well, the constitution is in the record and will speak for itself.

Mr. Van Dusen: Well, I think it is important and I would like for you, Mr. Examiner, to rule on this.

Trial Examiner Myers: Well, I will sustain the objection.

Mr. Van Dusen: You mean that I can go no further on this?

Trial Examiner Myers: Yes.

Mr. Van Dusen: I except.

Mr. Examiner, I feel that as this is an important witness and as I may have a few more questions to ask, I would like to continue with the witness tomorrow morning if you will permit.

Trial Examiner Myers: Well, it is five thirty now. Shall we adjourn until tomorrow morning?

(Testimony of J. Gordon Rosen.)

Is that agreeable with everybody?

We will adjourn until nine o'clock tomorrow morning, gentlemen.

(Thereupon, at 5:30 o'clock p. m., September 13, 1938, the hearing was adjourned to 9:00 o'clock a. m., September 14, 1938. [299])

Proceedings

Trial Examiner Myers: Are you ready to proceed?

Mr. Van Dusen: Yes, Mr. Examiner.

Trial Examiner Myers: Mr. Rosen, will you come around.

J. GORDON ROSEN

resumed the stand and testified further as follows:

Cross Examination

(Continued)

Mr. Van Dusen: Mr. Examiner, before I resume questioning this witness, it is my understanding that toward the close of the hearing yesterday you sustained an objection made by counsel for the Labor Board and counsel for the union to any questioning on my part, or testimony to be given by this witness, respecting talks and efforts to talk with the captain and officers of the various vessels for the purpose of showing authority of this witness to speak for a group of the unlicensed personnel. Is that correct?

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: That is not correct. I sustained the objection based on the theory that you were trying to prove that this man did not have authority to speak for the union as a whole; that is, that he was not delegated by the national office to represent the union as a whole.

Mr. Van Dusen: I am trying to distinguish between individual complaints and complaints and discussions made by this witness as a representative for a group or all of the unlicensed seamen. [301]

Trial Examiner Myers: On a particular boat?

Mr. Van Dusen: No, whether it is on a particular boat or for all the unlicensed seamen.

Trial Examiner Myers: As I understand, the testimony is that he was appointed delegate to speak for the men on the boat on which he was employed at the time he went to see the captain.

Mr. Van Dusen: Yes. Now my point is that if he speaks for some one other than himself, for a group of seamen, whether on a particular boat or for the entire fleet, I want to question him on the authority he has from the National Maritime Union, which is the exclusive bargaining agency for the unlicensed seamen for The Texaco fleet. Do I understand you do not permit us to do that?

Trial Examiner Myers: Well, it is conceded he did not have any authority from the National to speak for the entire personnel.

Mr. Van Dusen: Let me ask, do you concede, for the purpose of the record, that Mr. Rosen has

(Testimony of J. Gordon Rosen.)

no authority to speak as agent for the N. M. U. for the unlicensed personnel aboard all The Texas Company ships?

Mr. Wright: Mr. Van Dusen, it is my position, in the first place, is that whether he did or did not is immaterial. However, for your benefit, I state one more time that this man had no authority to bind the National Maritime Union in [302] a contract of any kind; that he had no authority to bind any branch of the National Maritime Union by a contract; and that he had a right to bargain on grievances with the personnel, the official personnel, of any ship, Texas Company or otherwise; and that he had a right to bargain in behalf of the crew on any matter that came to the attention of the crew, so long as the bargaining did not bind the National Maritime Union as such; that whatever he could get by way of bargaining for the members of the crew, the National Maritime Union has no complaint to make, and would urge no complaint, and that he has that much authority.

Mr. Van Dusen: I understand then that he has no authority to bind the National Maritime Union.

Mr. Wright: That is right. He can bargain in behalf of the crew, if the crew wants to be bound.

Trial Examiner Myers: Of a particular ship.

Mr. Wright: Yes, sir.

Mr. Van Dusen: Then he is not speaking as an agent of the National Maritime Union, which was appointed or certified as exclusive bargaining

(Testimony of J. Gordon Rosen.)

agency. He is merely speaking for the group.

Mr. Wright: The crew on the vessel on which he happened to be the delegate. Anything he could get, whatever they got by such bargaining, the National Maritime Union would have no objection whatsoever, so long as what he did did not bind the [303] union as such. If it bound the crew, that is up to the crew. The union has no concern in a particular crew on a ship not under contract. They could get whatever they can get.

Mr. Van Dusen: And he has no authority to bind the union?

Mr. Wright: That is right, or any branch.

Trial Examiner Myers: Is that clear?

Mr. Van Dusen: That is clear. I then move to strike out all the testimony respecting talks and efforts to talk with the captain and officers of the vessels where he was speaking for a group of the unlicensed personnel, on the ground that it is immaterial and irrelevant to this case, since this involves a charge of discrimination under the Labor Act, and refusal to bargain under the Labor Act, and other possible violations under the Labor Act.

Trial Examiner Myers: Do you want to be heard, Mr. Martin?

Mr. Martin: Yes. An action for refusal to bargain under the National Labor Relations Act can be based solely on what is known as an VIII-5 charge, referring to Section VIII-5 of the statute. There is no such charge in this case.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Do you want to be heard on that motion, Mr. Wright?

Mr. Wright: I think the motion is so patently out of order that it requires no comment at all. These men had a right to bargain in their own behalf as members of the National [304] Maritime Union for anything they could get out of the captain of that vessel. They did not undertake in any part of the negotiations they had with the captain on any vessel to bind the National Maritime Union as such. They had perfect authority to do everything that they did, under the testimony that is already in.

Mr. Van Dusen: I understand that, but I still insist it is immaterial and irrelevant to this case.

Mr. Wright: On the contrary, the very theory of this case is that these men were engaged in union activity, and because they were engaged in union activity The Texas Company fired them. We have got to show some union activity in order to justify this case. [305]

Mr. Van Dusen: I would like a ruling on my motion.

Trial Examiner Myers: I understand the testimony was elicited for the purpose of showing that these men were engaged in union activity, is that right?

Mr. Martin: That is correct.

Trial Examiner Myers: And that was the basis

(Testimony of J. Gordon Rosen.)

of the charge, discharge of these men for union activity.

Mr. Martin: That is correct.

Trial Examiner Myers: I understand also that the testimony was elicited under your complaint as to the charges of violations of Section 8, Subdivision 1, of the Act.

Mr. Martin: That is right, Mr. Examiner.

Trial Examiner Myers: And is offered for no other purpose.

Mr. Martin: That is correct.

Trial Examiner Myers: I will deny the motion.

Mr. Van Dusen: Exception.

Trial Examiner Myers: That is, I deny the motion to strike out.

Mr. Van Dusen: Yes, sir.

Trial Examiner Myers: Are you clear about the ruling as to the authority of this man to bind the union as a whole?

Mr. Van Dusen: Yes, I think Mr. Wright has cleared that up by his concessions.

Mr. Wright: It is no concession on my part.

[306]

Trial Examiner Myers: It is a concession, and was so conceded on Monday, that any man who engaged in any bargaining on a particular ship, that that person was not authorized by the national office in New York to bind the union as a whole. That was the stipulation entered into on Monday. Is that your idea of it?

(Testimony of J. Gordon Rosen.)

Mr. Van Dusen: Yes, but I merely want the record to be clear. If Mr. Wright is qualifying his concession that this man has not authority to bind the union, then I must question him on it.

Mr. Wright: I don't mean a concession in that respect.

Mr. Van Dusen: Then you will stipulate.

Mr. Wright: Yes, I will stipulate. That is exactly what I said. I thank you.

Q. (By Mr. Van Dusen) Now, Mr. Rosen, you testified yesterday that each time you made a particular coastwise or foreign trip you signed shipping articles? A. Yes, sir.

Q. That is correct, isn't it? A. Yes, sir.

Q. Now, the shipping articles for foreign trips are signed before a U. S. Commissioner, is that correct?

A. Yes, sir, I believe they are.

Q. Now, when these trips ended you were paid off, and at that time either signed new articles for another trip or got a [307] discharge certificate from the captain? A. Yes, sir.

Q. Isn't that a fact? A. Yes, sir.

Q. When this took place the old articles were terminated? What I mean is when you were either paid off or given a certificate of discharge and signed the new articles the old articles were terminated, that is correct, is it not? A. Well—

Q. For the same ship, I am talking about.

A. Sometimes they sign a man, sign him on new

(Testimony of J. Gordon Rosen.)

articles, and then fire him while he is still——

Q. No, I mean in your case, if you sign shipping articles, and you reach the port, and you are paid at that port——

A. Yes, sir.

Q. And you decided to stay on the ship you would sign new articles?

A. Yes, sir.

Q. And then the old articles were terminated at that time?

A. Yes, sir.

Q. You said that these articles which are Respondent's Exhibits 1, 2, 3 and 4 for identification were signed by you, and covered your trips on the "California". That was from June 30, 1937 to September 18, was it, 1937?

A. Yes, sir. [308]

Q. I will show you articles dated Port Arthur June 1, 1938, and ask you if you signed those articles?

A. Yes, sir, that is right.

Q. That covers your trip on the SS "Washington" from June 1, 1938 to July 14, 1938, when you said you were discharged by the officers of that ship, is that correct?

A. No, it is not. I signed another set of articles. This was just for this particular trip.

Q. Have you got your discharge for that?

A. I believe I have. (Witness handed discharge to counsel.)

Q. That refers to June 1, 1938 to July 14, 1938?

A. Yes, sir.

Q. Doesn't that tie into that?

A. Yes, continued service. I think that is only one trip.

(Testimony of J. Gordon Rosen.)

Q. What time did you make the other trip? Do you recall where you went on that trip?

A. The next trip we went to Claymont, Delaware.

Trial Examiner Myers: From Port Arthur?

A. From Port Arthur.

Q. (By Mr. Van Dusen) Were you paid off more than once on the SS "Washington"?

A. I believe we were, yes, sir. I have that down here somewhere. This was on or about June 23, 1938, we signed articles for the second trip, to the best of my knowledge.

Q. Similar articles to these? [309] A. Yes.

Mr. Van Dusen: Mark this for identification please.

(The document was marked "Respondent's Exhibit No. 5" for identification.)

Mr. Van Dusen: I now offer in evidence Respondent's Exhibits 1 to 5, inclusive for identification.

Trial Examiner Myers: Any objection to these exhibits marked for identification going in evidence?

Mr. Martin: No objection, Mr. Examiner.

Mr. Pipkin: They being ship's original papers, may we photostat them and substitute?

Trial Examiner Myers: You may.

Mr. Wright: No objection.

Trial Examiner Myers: There being no objection, I ask the reporter to please mark Respondent's

(Testimony of J. Gordon Rosen.)

Exhibits 1 to 5, inclusive for identification in evidence as Respondent's Exhibits 1 to 5, inclusive.

(The documents heretofore marked "Respondent's Exhibits Nos. 1 to 5, inclusive", for identification, were received in evidence.)

Q. (By Mr. Van Dusen) Mr. Rosen, may I see your discharge for the "California"?

A. Yes, sir.

Mr. Van Dusen: I would like permission of you, Mr. Examiner, to substitute photostats for these originals, as we may need them with other seamen?

[310]

Trial Examiner Myers: Any objection?

Mr. Martin: No objection.

Trial Examiner Myers: There being no objection, I grant the permission to substitute photostats for Respondent's Exhibits 1 to 5. [311]

Mr. Van Dusen: Mr. Examiner, may that apply to all original ship papers.

Trial Examiner Myers: Well, we will take them up as we come to them.

Q. (By Mr. Van Dusen) This certificate of discharge is signed by you, is it not, Mr. Rosen?

A. Yes, sir.

Q. It is also signed by the captain of the vessel, P. Peterson? A. Yes, sir.

Q. And this certificate was prepared by Captain Peterson when you left the ship, was it not? I mean that is the certificate he prepared when you left the ship?

(Testimony of J. Gordon Rosen.)

A. To that I couldn't testify, because the second mate handed me this discharge and gave me my money.

Q. Was the captain there?

A. No, the captain was not there at that time.

Q. Were you there when the captain signed it?

A. No, sir, I don't believe I was there when the captain signed it.

Q. Is that the captain's signature?

A. That is the captain's signature.

Q. Is that the captain's handwriting on the certificate of discharge?

A. I believe it is. [312]

Mr. Van Dusen: I offer this certificate of discharge in evidence.

Trial Examiner Myers: Any objection.

Mr. Van Dusen: I would like to have it photostated.

Trial Examiner Myers: You will pay for the photostating.

Mr. Van Dusen: Yes, sir.

Mr. Martin: Mr. Examiner, we have no objection to entering this as an exhibit, the certificate of discharge as an exhibit, so long as it is understood that photostat is to be taken and the original returned to Mr. Rosen at the most convenient time.

Trial Examiner Myers: Is that agreeable?

Mr. Van Dusen: Yes, sir.

Trial Examiner Myers: Hearing no objection, I ask the reporter to please mark the certificate in evidence as Respondent's Exhibit No. 6; and the

(Testimony of J. Gordon Rosen.)

respondent may substitute a photostat of the certificate in place of the original exhibit.

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 6 for identification and was received in evidence.)

Q. (By Mr. Van Dusen) May I see your certificate of discharge for the SS "Nevada"?

A. Yes, sir. I received two certificates of discharge.

Q. I mean the time you contend you were discharged. That is the second trip.

A. That is the coastwise articles. [313]

Q. Now this certificate of discharge, Mr. Rosen, is signed by you? A. It is.

Q. It is also signed by Captain Swanson?

A. Yes, that is right.

Mr. Van Dusen: I offer this certificate of discharge.

Trial Examiner Myers: Any objection to it?

Mr. Martin: Mr. Examiner, no objection if entered under the same conditions.

Trial Examiner Myers: There being no objection, I ask the reporter to please mark that certificate in evidence as Respondent's Exhibit No. 7. Respondent may substitute a photostat of the certificate in place of the original exhibit.

(Thereupon the certificate above referred to was marked as "Respondent's Exhibit No. 7 for identification, and received in evidence.)

(Testimony of J. Gordon Rosen.)

Q. (By Mr. Van Dusen) May I now have your certificate of discharge from the SS "Washington"?

A. Yes, sir.

Q. This certificate of discharge bears your signature?

A. Yes, sir.

Q. It also bears the signature of the captain of the SS "Washington".

A. To that I could not testify definitely, because it was [314] given to me by chief mate, Johanson.

Q. Look at it. Is that the captain's signature?

A. It looks like it.

Mr. Van Dusen: I offer this certificate.

Mr. Martin: Mr. Examiner, no objection if entered under the same conditions.

Trial Examiner Myers: There being no objection, I ask the reporter to please mark that certificate in evidence as Respondent's Exhibit No. 8. Respondent may substitute a photostat in place of the original certificate.

(Thereupon the certificate above referred to was marked as "Respondent's Exhibit No. 8 for identification and received in evidence.)

Mr. Van Dusen: Now, Mr. Rosen, the only foreign trip you made was that trip on the SS "Nevada" about January 10, 1938, when you went to Spain, is that right?

A. Yes.

Q. The trip you signed the so-called foreign shipping articles, is that right?

A. Yes, sir, that is right.

(Testimony of J. Gordon Rosen.)

Q. Now, Mr. Rosen, I believe on direct examination you testified that during the six years that you were an A.B. you were employed by approximately ten different companies, on the ships of ten different companies, is that correct?

A. No, sir, I don't believe that is correct. [315]

Q. Did you testify that during the time you were on the sea, which is approximately ten years, you worked for ten different companies, ten or more companies?

A. Approximately, yes.

Q. That means that over a period of ten years you worked for approximately ten different companies?

A. Well, there was some time in there, I am not certain about, positive.

Q. Well, for how many different companies have you worked during the time you were a seaman?

A. Well, about ten companies, offhand.

Q. Ten or more companies? A. Yes, sir.

Q. Now, isn't it the practice among seamen to shift from one vessel to another, and one company to another; isn't that a common practice?

A. It is among some seamen, most seamen, yes.

Q. You did that, didn't you?

A. Yes, I did.

Q. Many times you left a ship on your own accord, if you wanted to do something else?

A. Yes, sir, that is right.

Q. You said you left the Gulf ship because you didn't want to go north?

A. Yes, sir. [316]

(Testimony of J. Gordon Rosen.)

Q. In other words, you don't feel tied to a particular company? A. No, sir.

Q. Or to a particular ship? A. No, sir.

Q. Now, I show you the certificate of discharge which you got on the SS "California", and you just told me that you believed that certificate was written out in Captain Peterson's handwriting, is that correct?

A. Yes, I believe it is in his handwriting, but I am not sure.

Q. Now, on direct examination yesterday, didn't you say that Mate Baldwin prepared that certificate?

A. The second mate, yes, sir. He handed me the certificate.

Q. Didn't you say he prepared it?

A. No, sir, I don't believe that.

Q. I asked you if this question and answer were not asked you and given yesterday when Mr. Martin was examining you:

"Then what did you do after that conversation?

"Answer: Went down and started packing up. About one o'clock the second mate, Mr. Morgan, came down and said, 'I have been looking all over for you in order to give you your money.' While Mr. Baldwin was making out my discharge I said: 'What is the reason for me getting fired?' " Didn't you make that statement yourself?

A. Yes, sir. [317]

Q. Do you desire to change that?

(Testimony of J. Gordon Rosen.)

A. No, sir, I don't.

Q. Didn't you tell me this morning that was Captain Peterson's handwriting?

Mr. Wright: Mr. Examiner, I object.

Trial Examiner Myers: Overruled.

Q. (By Mr. Van Dusen) Didn't you tell me you believed that was in Captain Peterson's handwriting? A. That is right.

Q. Now if it was in Captain Peterson's handwriting Mr. Baldwin couldn't have prepared it, could he? A. He was preparing the voucher.

Q. No, just a minute. We are talking about the discharge. Here is what you said yesterday: "So I went up while Mr. Baldwin was making out my discharge."

A. Discharge papers, which includes voucher.

Q. Now you desire to qualify the statement you made yesterday.

Trial Examiner Myers: What are the facts? Tell us what the facts are.

A. Well, I went up there to get my money and discharge papers, and Mr. Baldwin was writing in the papers there.

Q. What papers?

A. The vouchers, as close as I could see it, discharge papers, whatever they were. [318]

Q. But not the certificate of discharge?

A. That I couldn't absolutely swear to, no, sir.

Trial Examiner Myers: Well, can the mate make out a discharge, a certificate of discharge?

(Testimony of J. Gordon Rosen.)

A. He can make it out, I believe, provided it is signed by the captain.

Q. (By Mr. Van Dusen) But you told me this morning you believed that discharge was in Captain Peterson's handwriting?

A. No, sir. The signature is in Captain Peterson's handwriting.

Q. I asked you this morning if the certificate was in Captain Peterson's handwriting, after I had asked you about the signature. You said you——

A. I thought you referred to the signature.

Q. Isn't that what you said?

A. I can't remember.

Q. You can't remember what you said this morning?

A. I remember I said it was in the captain's handwriting, yes, sir.

Q. Now is it or is it not in the captain's handwriting? A. The signature is.

Q. I am talking about what is on the rest of that certificate.

A. I would like to look at it again.

Q. Well, look at it. [319]

Trial Examiner Myers: Let him look at it. Please give the witness the exhibit.

A. Well, I am not a handwriting expert; I couldn't tell you. I just feel that the signature——

Q. (By Mr. Van Dusen) I know that, but you have seen the captain's handwriting. You can compare it with the signature on other papers.

(Testimony of J. Gordon Rosen.)

A. I won't swear to it, because I never saw him sign that.

Q. You always believed it was the captain's signature, didn't you? A. Yes, sir.

Q. You took it for that purpose, didn't you?

A. Yes, sir.

Q. You kept it in your possession because you believed it was the captain's signature?

A. Yes, sir.

Q. And you believe the rest of it was made out by the captain? A. That I don't know.

Q. That is what you told me this morning, didn't you?

A. I don't remember whether I did or not.

Q. Well, who made it out?

Mr. Wright: I would like to object to this line of questioning for the reason that I think the record is clear as to what he did testify, and further questioning along that [320] line is argumentative by counsel.

Trial Examiner Myers: Overruled.

Q. (By Mr. Van Dusen) Will you look at your notes. I think you read from your notes.

A. Not from Captain Peterson.

Q. You have nothing in your notes on that?

A. No, sir, not on the "Washington".

Q. You didn't see Baldwin prepare this certificate of discharge, did you?

A. I saw him writing some papers.

(Testimony of J. Gordon Rosen.)

Q. Did you see him prepare this particular certificate of discharge?

A. That I couldn't swear to, no, sir.

Trial Examiner Myers: Did you see Baldwin write?

A. You mean write out anything?

Q. Yes.

A. Yes, sir, I saw him writing those.

Q. Would you recognize his handwriting?

A. No, sir. That has been quite a long time ago. I don't believe I would, not his handwriting.

Q. (By Mr. Van Dusen) Now, Mr. Rosen, these things that you read from yesterday, how long after the talks with the particular people involved were those notes prepared by you?

A. About as close as I could make it back to the forecastle, about an hour usually. [321]

Q. At any time was it more than an hour?

A. Yes, sir, at times it was more than an hour.

Q. What is the longest amount of time you waited before preparing those notes?

A. Well, I can't remember any particular instance.

Q. Did you ever wait a day?

A. No, sir, not that long.

Q. Several hours? A. Perhaps several hours.

Q. You wouldn't say half a day?

A. No, sir, I don't think so.

Q. Now did you put the dates down that you made those notes?

A. On most occasions, yes, sir.

(Testimony of J. Gordon Rosen.)

Q. Other times you did not?

A. I think there are——

Q. Are there some notes there that have no dates? A. I would have to look through to tell.

Q. Will you do that, please?

A. I believe the dates are all in here, yes, sir.

Q. You have a date for every particular conversation referred to in these notes, is that it?

A. Yes, sir.

Q. Now you were reading from those notes yesterday, were you not? [322]

A. With some insertions, yes, sir.

Q. What insertions?

A. Well, the notes were written out hurriedly, and as I read them I would recall different instances.

Q. But at certain times you were reading directly from the notes? A. Yes, sir.

Q. Now you don't say, Mr. Rosen, that those notes that you read give the exact words which you overheard?

A. No, sir, I wouldn't say they give the exact words.

Q. Then when you said a particular officer or a captain on the ship, or Mr. Hand, made certain statement, you wouldn't say that the words were exactly as you read them from your notes?

A. No, sir, just the best of my memory at that time. [323]

Q. (By Mr. Van Dusen) Now, Mr. Rosen, I

(Testimony of J. Gordon Rosen.)

believe you testified yesterday that you were registered with the Seamen's Church Institute so that you might get aboard Texas Company ships, is that correct? A. Yes, that is right.

Q. You did that on two occasions after you said you were discharged from Texas Company ships, is that correct? A. Yes, sir.

Trial Examiner Myers: When you say "discharged" do you mean the expression he used, "fired"?

Mr. Van Dusen: I mean the expression Mr. Rosen used.

Trial Examiner Myers: "Fired"?

Mr. Van Dusen: What is that?

Trial Examiner Myers: "Fired"?

Mr. Van Dusen: Yes, when he says he was fired.

Q. (By Mr. Van Dusen) Now, you also testified that your purpose in doing that was to organize the seamen on board The Texas Company ships, isn't that correct?

A. To secure employment and if possible to organize the seamen.

Q. I am asking you what you testified to yesterday?

A. Well, under your questioning, I believe you asked me what I did aboard The Texas Company ships; why I went to work with The Texas Company ships. I said to secure employment—— [324]

Q. (Interrupting) Now, let me ask you if Mr.

(Testimony of J. Gordon Rosen.)

Examiner did not ask you this question and if you did not give him the answer:

“Trial Examiner Myers: If I may interrupt, what is the purpose, Mr. Rosen, of getting off one ship and then going down to the Seamen’s Institute and signing up on The Texas Company’s list?”

“Answer: Well, I tried to get back with The Texas Company because they were unorganized and I felt as long as they were unorganized it was the duty of every member of the Union to concentrate on that company until they did become organized.”

Did you so testify?

A. Yes, I made that statement.

Q. Now, Mr. Rosen, after these two first discharges; that is, after you say you were discharged from the “California” and the “Nevada”; you were pretty bitter toward The Texas Company, weren’t you?

A. Well, that is a hard question to answer.

Q. Well, I mean you had no friendly feeling for The Texas Company?

A. I didn’t have nothing against The Texas Company itself, but I felt that some of the officials were unfair.

Q. Well, the Company is represented by its officials isn’t it? Isn’t that so? [325]

Mr. Wright: Mr. Examiner, I suggest that attorney for the respondent is probably better qualified to answer that question than this witness. He does not happen to be an official of the company.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: You do not mean by that statement, Mr. Wright, that you would rather take the stand, do you?

Mr. Wright: I mean the attorney for the respondent is better qualified to know whether the officials of the company represent it than this man.

Trial Examiner Myers: Read the question.

(The last question was read.)

Trial Examiner Myers: That is argumentative. Will you reframe your question?

A. (By Mr. Van Dusen) Well, the company, The Texas Company, is not a person, isn't that so?

Mr. Wright: I suggest that is a legal conclusion, Mr. Examiner.

Trial Examiner Myers: Well, let's get on with it. Counsel wants to find out something from this witness and there is no use in putting in a lot of frivolous objections.

Q. (By Mr. Van Dusen) The company is really the officers who determine what must be done, isn't that so?

A. Well, the stockholders and the Board of Directors, I believe they set a policy for the officials to follow.

Q. You say you didn't like the officials. What officials? [326]

A. Well Mr. Tranberg——

Mr. Wright: Mr. Examiner, may I have the objection that this is irrelevant and immaterial.

Trial Examiner Myers: Objection overruled.

(Testimony of J. Gordon Rosen.)

A. I didn't care particularly about Mr. Tranberg.

Q. (By Mr. Van Dusen) Do you call him an official of the company or of that particular ship?

A. I don't know whether he is an official of the company while he is on the ship or what he is.

Q. All right. What other official?

A. That would be about all.

Q. That is all? That is the only one?

A. At that time, yes, sir, and Mr. Dave Rosen on the "California."

Q. You didn't like Captain Bergman very much, did you? A. That was on the "Washington."

Q. I am talking about all those ships. They are all operated by The Texas Company, aren't they?

A. I thought you asked me——

Q. (Interrupting) No. You said The Texas Company officials.

A. Well, then after I had the conversations, I naturally had a certain amount of unfriendly feeling toward Captain Bergman and the mate.

Q. What about Mr. Hand?

A. Well, a certain amount, yes. [327]

Q. How about Mr. Roney?

A. No, sir, I don't think I had any animosity toward him.

Q. Well, you didn't like the way The Texas Company operated its ships?

A. No, sir. I don't believe that was the statement I made.

(Testimony of J. Gordon Rosen.)

Q. Well, did you like the way they operated their ships? A. No, sir.

Q. Well, what is it? You either did or you did not.

A. The thing I didn't like on there was the letter they sent down promising us certain things. We asked for those things and we were discharged.

Q. Yes, but you were on the "California" long before that letter, weren't you? A. Yes, I was.

Q. And you didn't like the way that ship was operated?

A. Well, it is not a question of the way the ship was operated.

Q. Well the way it was run by the officers of the ship.

A. Just the way the mate handled us, yes.

Q. And that applied to three ships, didn't it?

A. Yes.

Q. And that was every ship you were on of The Texas Company, isn't that so? A. Yes, sir.

[328]

Q. And each time you still wanted to get on a Texas Company ship? A. Yes, sir.

Q. Now isn't it a fact, Mr. Rosen, that you were hired by the N. M. U. to go aboard and organize The Texas Company ships? A. No, sir.

Q. Weren't you paid by the N. M. U.?

A. No, sir.

Q. You got no compensation at all from the N. M. U.?

(Testimony of J. Gordon Rosen.)

A. I never received any compensation.

Q. Did they pay your subsistence while in Port Arthur? A. No, sir.

Q. Are they paying anything for your stay in Port Arthur since you left the SS "Washington" while waiting for this case to come up?

A. I am paying my own subsistence.

Q. They have paid you nothing at all?

A. No.

Trial Examiner Myers: Have you been promised any money? A. Sir?

Trial Examiner Myers: Have you been promised any money?

A. No, sir, I have never been promised any money.

Q. (By Mr. Van Dusen) Now, those two circulars that were introduced in evidence, did you say that you prepared those? [329]

A. Yes, sir, I prepared those.

Q. At your expense?

A. The crew on the SS "Washington" promised to produce the necessary funds. I put up seven and a half dollars of my own money as a part payment to see that they would be printed.

Q. How much did it cost to print those circulars? [330]

Mr. Wright: Mr. Examiner, I would like to object to the immateriality of the question.

Mr. Van Dusen: I think this is very important, Mr. Examiner.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Objection overruled.

A. About \$15.25.

Q. (By Mr. Van Dusen) Both circulars or just the one?

A. No, sir, the first circular was mimeographed.

Q. Where was that done?

A. In the Union Hall.

Q. On the union machine? A. Yes, sir.

Q. Did the union contribute anything toward the printing of the second circular?

A. Why they stood for the credit, yes, sir. They had the agreement that when the second circular was printed they would stand good for it until the total amount was collected?

Q. And you paid \$7.50 out of your own funds?

A. Yes, sir.

Q. And the union paid the balance?

A. No, sir, they just stood good for it; credit.

Q. Well, has it ever been paid?

A. That I couldn't tell you.

Q. Didn't you incur the obligation? Didn't you order the printing job done? [331] A. Yes, sir.

Q. Well, don't you know whether it has been paid?

A. Well, that is the affair of the union now.

Q. Then it is the affair of the union, is it?

A. The crew on the "Washington" brought in some \$10.75 or something and applied it on the bill and that wiped out the obligation of the union and my \$7.50 is still pending.

(Testimony of J. Gordon Rosen.)

Q. Did the crew give the money to you to take to the union to pay the bill off?

A. It was taken up to the Union Hall to be straightened out.

Q. You took it up to the Union Hall?

A. No, sir.

Q. Who took it up to the Union Hall?

A. The delegate on the ship.

Q. What is his name?

A. I don't remember that man's name.

Q. Were you with him? A. Yes.

Q. And you don't know his name?

A. No, sir.

Q. A delegate on your ship?

A. He was there after I was fired.

Q. And you don't know his name?

A. I don't recollect his name at this particular moment. [332]

Q. Is he one of those who signed the circular?

A. No, sir, I don't believe he is.

Q. Were these circulars shown to any people in the N. M. U. local office here before they were distributed? A. Yes, they were.

Q. To whom? A. Well, officials.

Q. Whom? The names? A. Mr. Ames.

Q. Mr. Ames? A. Yes, Mr. Ames.

Q. Anybody else? A. Mr. Vest.

Q. Who? A. Patrolman, Mr. Vest.

Q. Were they shown to the attorneys for the N. M. U.?

(Testimony of J. Gordon Rosen.)

A. That I don't know. They were left in the Union Hall and whom they were shown to I don't know.

Q. You left them there for a few days?

A. Yes, sir.

Q. And then they told you that they were satisfactory to them?

A. No, sir. The procedure we used, we mailed a sample copy——

Q. (Interrupting) No. I am talking about——

A. (Interrupting) The green circular? [333]

Q. Yes, sir. You took them to the union and you left them there?

A. No, they started circulating them immediately.

Q. You told me Mr. Ames and some others approved them? A. Yes, sir.

Q. So you must have left them there?

A. Yes, sir.

Q. How long did you leave them there before they were distributed?

A. Before they were distributed?

Q. Yes.

A. Not very long. Not more than a day.

Q. And then you went back for them?

A. Yes, sir.

Q. And they told you the circular was all right then?

A. They said they were distributing them at that time already.

(Testimony of J. Gordon Rosen.)

Q. They said the circular was all right to the union?
A. Yes, sir.

Q. Who told you that?
A. Mr. Ames.

Q. And then you started to distribute them?

A. They had been distributing some of them before this already.

Q. Did they tell you where to distribute them?
[334]

A. No, sir, they didn't tell me where to distribute them.

Q. You just decided that for yourself, is that it?

A. Yes, sir.

Q. Now, Mr. Rosen, at the time you applied at the Seamen's Church Institute for employment on The Texas Company ships were there any other companies that had not signed an agreement with the N. M. U. to your knowledge?

A. Yes, sir, there were.

Q. What companies?

A. The Sabine Towing Company.

Q. Any other?
A. Atlantic Refining.

Q. Any others?
A. Pure Oil.

Q. Any others?
A. Sun Oil.

Q. Sun Oil?
A. Yes.

Q. Did you try to obtain employment on those ships?

A. Well, I would have taken a job, but it was never offered to me.

Q. You testified yesterday that you asked the Seamen's Church Institute to be put on The Texas

(Testimony of J. Gordon Rosen.)

Company list, is that right? A. Yes. [335]

Q. So you wanted a job on The Texas Company ships? A. If possible.

Q. You were not interested in getting a job on these other company ships?

A. If they offered it to me I wouldn't have turned it down.

Q. But you asked to be put on The Texas Company list? A. Yes.

Q. Is that the only list that they have down there, The Texas Company list?

A. They have a ship's list, but I don't know whether they have an open list or not.

Q. Were you then on the open list? A. No.

Q. Then if the Cities Service Company or the Atlantic Refining Company wanted you they couldn't get you at the Seamen's Church Institute, could they?

A. They could have called down for me.

Q. But you were not on the open list?

A. No.

Q. You were on The Texas Company list?

A. Yes.

Q. So the Pure Oil or the Atlantic Refining couldn't get you through the Seamen's Church Institute, could they? A. No, sir.

Q. You were not interested in those ships of those companies, [336] were you?

A. It is pretty hard for a union man to get on those ships.

(Testimony of J. Gordon Rosen.)

Q. Weren't you interested in organizing those ships?

A. Well, we had other good men who were organizing those ships.

Q. You wanted to get on The Texas Company ships? A. Well, that was one of my duties.

Q. Just to organize The Texas Company ships was your duty? A. No.

Q. You didn't want to get on those other company ships?

A. Yes, I was registered up at the hall.

Q. I mean the companies that did not sign contracts with the N. M. U.?

A. Well, it is pretty hard for a union man to get on those ships.

Q. Why?

Trial Examiner Myers: From what I gather from your testimony you say it is pretty hard to get on those ships? A. Yes, sir.

Trial Examiner Myers: So when you registered at the Union Hall that meant that you didn't desire to get on the other boats?

A. I wanted to get on the other boats in that I wanted a job.

Q. (By Mr. Van Dusen) But you couldn't get a job on those [337] boats through the N. M. U. Union Hall, could you? A. No.

Q. Did you call up any of those other companies to try to get on their ships?

Mr. Wright: I object to that as argumentative.

(Testimony of J. Gordon Rosen.)

Q. How do they determine what man they will take when there is a job available?

A. Well, they call out the jobs at certain hours of the day. Then if the man is there, the highest number on the list receives it. [340]

Q. Then they do have a numerical list in the order in which you register? A. Yes, sir.

Q. Didn't you inquire to see how you stood on that list when you registered?

A. I can see it. It is put out in plain view.

Q. About how many names were there ahead of yours? A. About 60 or 70 A. B.'s.

Q. Now this is when you left the SS "Washington"? A. Yes.

Q. Have you gone back from time to time to see whether your position on that list has changed?

A. Yes, sir.

Q. What is your position today?

A. There are about ten or twelve A. B.'s ahead of me.

Q. Ten or twelve? A. Yes.

Q. Ahead of you? A. Yes.

Q. Then you are telling me that since July 18, 1938, only 50 men have been employed through the N. M. U. Hall on board ships, is that correct? Approximately 50? A. A. B.'s I am talking about.

Q. A. B.'s. Is that correct?

A. Except that I couldn't tell. I know that I have moved [341] up on the list, but under our system those men can be removed from the list for

(Testimony of J. Gordon Rosen.)

missing more than two meetings.

Q. Did you miss any meetings? A. No, sir.

Q. Then you would go up the list faster?

A. Yes, I would go up the list faster.

Q. You would go up the list faster, sure.

A. Yes.

Q. Now what I am asking you is this: You said there were approximately 60 ahead of you when you left the SS "Washington" and registered.

A. Sixty or seventy.

Q. Now you say you are No. 10.

A. Ten or twelve ahead of me.

Q. So that there are approximately 50 and perhaps less men who got jobs through the N. M. U. Hall since you first registered after you left the SS "Washington", isn't that correct?

Mr. Wright: Mr. Examiner, I would like to object to that for the reason that it is argumentative.

Trial Examiner Myers: Overruled.

A. I don't believe I understand your question.

Q. (By Mr. Van Dusen) After you left the SS "Washington" and registered at the N. M. U. Hall you just told me that there were approximately—I am not saying exactly—approximate [342] approximately 60 A. B.'s ahead of you on the list, is that correct?

A. Approximately, yes.

Q. Now you say if men fail to attend two meetings they may be taken off that list, is that correct?

A. That is correct, yes, sir.

Q. That would move you up the list more

(Testimony of J. Gordon Rosen.)

quickly? A. It very seldom happens.

Q. Well, I mean it would move you up the list more quickly if it did happen?

A. If it did happen.

Q. Now you say today there are approximately ten or twelve names ahead of you?

A. Yes, that is right.

Q. That means that since the day you first registered and up to today approximately 50 or 48 men have gotten jobs through the N. M. U. Hall; that is, have either gotten jobs or have been eliminated from the list?

Mr. Wright: I would like to object to the question for the reason that it is argumentative.

Trial Examiner Myers: I will overrule it.

Q. (By Mr. Van Dusen) You can subtract 12 from 60, can't you?

A. The point is that there were that many men ahead of me that shipped out and left.

Q. And is that correct? [343]

A. Yes, I guess that is correct.

Q. Now if you are No. 10 now that is approximately the same number that you have over at the Seamen's Church Institute, isn't it?

A. No, sir. There is twelve ahead of me at the union hall and on the Seamen's Institute the list also contains ordinary seamen and in the union hall it contains only A. B.'s.

Q. Well, now let me ask you this: Are more men hired out of the N. M. U. Hall than off The Texas

(Testimony of J. Gordon Rosen.)

Company list on the average?

A. I am not in a position to say that.

Q. Well now you are a member of the N. M. U.?

A. Yes, sir.

Q. You are an active organizer? A. Yes.

Q. You know a good deal about the Texas Company ships and about the list over at the Seamen's Church Institute. Now would you say that The Texas Company gets more seamen on an average, more A. B.'s, than the N. M. U.? You would not say that, would you?

Mr. Wright: Mr. Examiner—

Mr. Van Dusen: Of his own knowledge. I am asking of his own knowledge.

Mr. Wright: For your benefit, the N. M. U. keeps its list with reference to A. B.'s. This man does not keep up [344] with cooks and stewards and ordinary seamen and other men on other lists. Secondly, he knows about the A. B.'s probably, but he doesn't know about the engine room, the stewards, and so forth.

Mr. Van Dusen: I am asking him about the two lists.

Mr. Wright: All right. Ask him about the A. B.'s. [345]

Trial Examiner Myers: Gentlemen, if you have any objections will you please make them.

Mr. Wright: I am objecting for the reason that this man has no knowledge with respect to the question asked him.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Well, we will find out what knowledge he has. He was asked if he knew.

Q. (By Mr. Van Dusen) What men are registered on the list at the N. M. U. Hall on which you are registered? A. A. B.'s.

Q. What men are listed on the lists over at the Seamen's Church Institute, The Texas Company list?

Trial Examiner Myers: On which you are registered? A. A. B.'s and ordinary seamen.

Q. (By Mr. Van Dusen) Now, would you say that The Texas Company hires from Port Arthur more A. B.'s than ordinary seamen combined on an average than the N. M. U. furnishes to other ships from its list?

A. It would be just a matter of opinion.

Q. Well, what is your opinion? Doesn't the N. M. U. supply a good deal more seamen, more A. B.'s and ordinary seamen, than The Texas Company? A. I doubt it.

Q. How many companies have signed agreements with the N. M. U.?

A. Oh, quite a few. [346]

Q. The Gulf? Is that right? A. Yes.

Q. The Gulf is a large company?

A. But they have five ships laid up. That puts a lot of men on the beach.

Q. All right. How many ships have they got operating? A. About fifteen I understand.

Q. Fifteen? A. Yes.

(Testimony of J. Gordon Rosen.)

Q. They all come to this port?

A. The majority of them do, yes.

Q. What other companies have signed with the N. M. U.? A. Well, the Standard Oil.

Q. How many ships do they have coming to this port? A. Not many.

Q. How many approximately?

A. Maybe one a week.

Q. Any other companies who have signed with the N. M. U.? A. Tidewater.

Q. How many ships do they have coming to this port? A. About the same average.

Q. Well, how many? A. About one a week.

Q. Any other companies?

A. The Kellogg Steamship Company. [347]

Q. How many do they have coming into this port? A. They rarely come in here.

Q. Any other companies?

A. The C. D. Mallory.

Q. How many ships do they have coming here?

A. About two a month. Approximately, now. I am not stating definitely.

Q. Yes, I realize that. What other company?

A. Lykes Bros.

Q. How many do they have coming in here?

A. Very seldom. Perhaps once a month.

Q. Any other companies?

A. Yes, there are some other companies, but this is not their pay-off port like it is in The Texas Company.

(Testimony of J. Gordon Rosen.)

Q. Well, do they get seamen here?

A. Well, seamen might quit here.

Q. You say seamen might quit here and then they would have to be replaced, wouldn't they?

A. Yes, sir.

Q. Any other company?

A. I believe I have mentioned C. D. Mallory, Gulf, Tidewater, Kellogg.

Q. Standard Oil?

A. Standard Oil, Lykes Bros.

Q. Any others? [348]

A. The American West African Line.

Q. How many ships do they have coming in here?

A. Oh, they have one come in here about every four months; not steady.

Q. Any other ships?

A. Not regularly that I know of.

Q. Now, of all those companies that you have mentioned having ships coming in here, doesn't the N. M. U. furnish more A. B.'s to those ships than the Seamen's Church Institute furnishes A. B.'s and ordinary seamen for Texas Company ships?

A. I don't think so, because the seamen on The Texas Company ships are more inclined to recognize Port Arthur as their home port, the place where they have practically a residence, and they get off down here, but the other ships, most of their men get off in New York, up North somewhere.

Q. Then, you think The Texas Company does

(Testimony of J. Gordon Rosen.)

a bigger business than all these other shipping companies concerned, is that so?

A. It is a matter of opinion. It is a question I wouldn't care to answer.

Q. A pretty large operator?

A. Yes, sure, a pretty large operator.

Q. And that is the reason you want to organize them, isn't it?

A. Well, that gets into the—— [349]

Q. (Interrupting) Isn't that so?

A. No, that is not my reason for wanting to organize them. That is my duty as a union member.

Q. It is also your duty to organize other ships?

A. If possible. If I can get aboard them.

Q. Well, can you get aboard The Texas Company ships? A. Sometimes.

Q. But the others are pretty hard to get on?

A. Well——

Q. They are pretty tough?

A. They are hard enough.

Q. Not as tough as The Texas Company? What?

A. Well, I would have——

Q. (Interrupting) All right. All right. Never mind. Now Mr. Rosen, you have been on a number of other ships. Were you ever discharged from any other ship? Were you ever fired from any other ship? A. Well, it is possible.

Q. Well, you have a pretty good memory. You remember everything that happened on these Texas Company ships. Now, just think. Were you ever

(Testimony of J. Gordon Rosen.)

fired from any other ship?

A. Not that I know of to my knowledge.

Q. Haven't you got a pretty good memory?

A. It is up to a certain point, yes, sir.

Q. You mean when it involves Texas Company ships? [350]

Trial Examiner Myers: All right now, if we have to go around in a rigamarole sort of way, now, let's do it. Were you ever fired by the Gulf Company?

A. No, I don't believe I was ever fired by the Gulf Company.

Trial Examiner Myers: What other companies have you worked for? A. Mississippi.

Trial Examiner Myers: Were you ever fired by the Mississippi Company? A. No.

Trial Examiner Myers: What other company?

A. Waterman.

Trial Examiner Myers: Were you ever fired by them? A. No, sir.

Trial Examiner Myers: What other company?

A. Lykes Bros.

Trial Examiner Myers: Were you ever fired by them? A. No, sir.

Trial Examiner Myers: What other companies?

A. Swayne & Hoyt.

Trial Examiner Myers: Were you ever fired by them? A. No, sir.

Mr. Van Dusen: What was that company?

A. Swayne & Hoyt. [351]

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: What about the company that went out on strike? What company was that?

A. The Waterman Steamship Company went out on strike.

Trial Examiner Myers: And they took you back without firing you?

A. I never tried to get back.

Trial Examiner Myers: After the strike, you went where? A. On the *Swayn* & Hoyt ship.

Trial Examiner Myers: Were you ever fired by them? A. No, sir.

Trial Examiner Myers: Were you ever fired by any company, whether a steamship company or a land company? In your whole life were you ever fired? A. Well, I probably was.

Trial Examiner Myers: Well, what are the facts.

A. I don't know.

Trial Examiner Myers: You know whether or not you were fired, don't you?

A. Well, if I tried to recall something before I lost my hair I get in some kind of difficulty. [352]

Q. (By Mr. Van Dusen) You mean the time you lost your hair affected your memory?

A. Well, I don't know what happened.

Q. You mean your memory is not so good now?

A. No, I think I am getting over it now.

Q. You can just remember as far back as when you started on The Texas Company ships, is that so?

(Testimony of J. Gordon Rosen.)

Mr. Wright: I object to that line of questioning from counsel for the company.

Trial Examiner Myers: Overruled.

A. Well, I don't like to bring it out personally, but when my hair fell out I went to the hospitals, I went to specialists, I took injections, I had special kind of pills.

Trial Examiner Myers: What has that got to do with being fired? What has that got to do with it?

A. When I try to remember back to that it just brings out the fact that I can't hardly remember anything but my hair falling out. I can remember some of the things, but I can't remember them definitely.

Q. (By Mr. Van Dusen) Well, you remember that you were a seaman for ten years?

A. Approximately.

Q. And you remember that you worked for ten steamship companies?

A. Approximately. [353]

Q. Still you don't know such an important thing as being fired? Wouldn't that stand out in your mind?

A. It would under ordinary circumstances, yes.

Q. Are these extraordinary circumstances?

A. I don't know.

Q. Then you may have been fired a number of times, is that so?

A. Oh, I may have been fired.

Q. All right. I will take that. You say you were

(Testimony of J. Gordon Rosen.)

in a hospital. What hospital was that?

A. Well, the New Orleans Marine Hospital.

Q. What is that?

A. The New Orleans Marine Hospital.

Q. About what time?

A. When my hair fell out.

Q. Approximately what date was that?

Trial Examiner Myers: You told us yesterday it was in 1932. A. About six years ago.

Q. (By Mr. Van Dusen) 1932?

A. About that time.

Q. About what month? Do you remember?

A. The end of the year.

Q. November or December?

A. Yes, right around there or after Christmas.

Some time in [354] there.

Q. In December then? December or January?

A. Yes.

Q. Now when you were on these two Gulf ships you were a member of the N. M. U., were you not?

A. Yes, sir, I was.

Q. Did you have any complaints against the Gulf Company regarding conditions on those ships while you were there?

A. Yes, sir, I believe I did.

Q. What complaints?

A. On the "Gulfbelle" one was the question of overtime.

Q. Yes. Anything else?

A. Quartermasters working on a watch below.

Q. Anything else?

(Testimony of J. Gordon Rosen.)

A. That is approximately all.

Q. How about the other Gulf ship?

A. The "Gulfgem"?

Q. The "Gulfgem".

A. Well, there was quite a bit of difficulty on her.

Q. What was the difficulty?

A. Well, when I came on board of the ship the delegates on there had some difficulties.

Q. Over what?

A. Over the discharge of a certain man.

Q. What happened? [355]

A. Well, he was reinstated.

Q. You had a regular procedure for that?

A. What is that?

Q. You had a regular procedure for getting reinstatements? What did you do about it? Did you represent the crew?

A. No, I didn't represent the crew.

Q. You were not a representative on those ships? A. Not at that time.

Q. Were you at any time? A. Yes, sir.

Q. When?

A. On the "Gulfbelle" I was elected delegate and on the "Gulfgem" I was elected delegate.

Q. You were a delegate on both ships?

A. Yes, sir, I was.

Q. Then you assisted in handling those complaints with the Gulf Company?

(Testimony of J. Gordon Rosen.)

A. While I was a delegate I assisted in handling complaints with the masters of the ships.

Q. Then you engaged in union activities on those ships, did you not? A. Yes, sir, I did.

Q. You are sure you were not fired from either of those ships? A. No, I was not fired. [356]

Q. You are positive of that?

A. Yes, I am positive.

Q. Was any complaint made against you or your activities on those ships? A. Not to me.

Q. Well, do you know?

A. Just that question——

Q. (Interrupting) Were any complaints made by the Gulf Company regarding your activities aboard those two ships?

A. The Gulf Company didn't make any complaint.

Q. Or by the Gulf Company officials or the officers of those ships?

A. Well, the captains had the regular discussions and the captain on the "Gulfbelle" just wanted to stress the fact that they did have an agreement and we should live up to it, which we agreed to, and the captain on the "Gulfbelle" had discussions about the same nature.

Q. Did he ever have any dispute with you? Disagree with you?

A. Yes, he disagreed with us.

Q. How were those disagreements disposed of?

A. Well, if we can't dispose of them on the ship

(Testimony of J. Gordon Rosen.)

by the ship's committee, we call the delegates from shore. The delegates come down to the ship. If they can't dispose of them, they are handled by an arbitration committee and that is [357] the manner in which they are settled.

Q. Were any charges made by the captains or other officials of the Gulf Company against you and your activities on those two ships?

A. Not that I know of.

Q. Now when you were on the SS "Nevada" who was your boss? Tranberg?

A. No, sir, the boatswain is my supervisor.

Q. He is your supervisor and who is his boss? Tranberg? A. The mate, Carl Tranberg.

Q. So Tranberg was really your boss? He was over the boatswain, wasn't he?

A. He was over the boatswain.

Q. Now it was Tranberg's duty, was it not, to see to it that the A. B.'s, of which you were one, and the boatswain did their duties aboard ship, isn't that correct? He was responsible for the A. B.'s and the boatswain, wasn't he?

A. Well, the mate, Mr. Tranberg, gave the orders to the boatswain and the boatswain saw that the job was done correctly.

Q. I mean the orders applying to you all came from Tranberg or the captain? A. Yes, sir.

Q. Now Tranberg made periodic inspections and tours of the vessel to see that the A. B.'s and the

(Testimony of J. Gordon Rosen.)

boatswain were attending to their duties, did he not? [358]

A. Most of the time he did, yes, sir.

Q. He knew when you were holding meetings of the crew on off hours, did he not? Did he ever see you holding meetings?

A. I don't know whether the mate ever saw us hold meetings or not. The captain did at one time.

Q. The captain did? A. Yes, sir.

Q. The captain didn't interfere with the meetings in any way, did he?

A. No, sir, he just walked by.

Q. Now didn't the mate at times see you in those meetings? He is around more than the captain, is he not?

A. That would be a hard question to answer.

Q. Well, do you remember? You remember a lot of other things that happened on that boat. Now do you remember that?

A. Are you referring to the——

Q. (Interrupting) The meetings of the crew that you called from time to time.

A. I don't remember the mate ever walking by our meetings. We usually held them in the mess room and I don't remember the mate walking by.

[359]

Q. You held a lot of meetings with the members of the crew and had a lot of discussions with the members of the crew?

A. Why we usually held meetings, on a foreign

(Testimony of J. Gordon Rosen.)

trip, about twice on the way across and twice on the way back.

Q. Well, if you had particular grievances you held a special meeting, didn't you?

A. Yes, that is right.

Q. About how many of those did you have?

A. Whenever the occasion arose.

Q. About how many on the "Nevada"?

A. About four on the "Nevada".

Q. About four on the "Nevada"?

A. At least.

Q. Now, if you had a very special grievance you might hold a meeting of the members of the crew during working hours, might you not? That is with reference to special grievances.

A. It is possible, yes.

Q. Now, isn't it a fact that Chief Mate Tranberg found you loafing on a number of occasions?

A. Not that I can remember.

Q. Well, just think a little bit now. Isn't it a fact that on several occasions he found you loafing; not attending to the duties that you were supposed to be attending to?

A. He never said anything to me about it.

Q. I didn't say that he said anything to you about it, but [360] didn't he find you on several occasions not attending to your duties?

A. Not that I know of.

Q. Well, he might have? It is possible.

A. What duties are you referring to?

(Testimony of J. Gordon Rosen.)

Q. Duties which you were supposed to be performing on board the ship as an A. B.

A. Well, I always tried to attend to my duties.

Q. I realize that, but isn't it a fact that on several occasions he found you not attending to your duties?

A. I can't remember of any, no.

Q. Well, it is possible that he might have? Isn't that so?

Mr. Wright: Mr. Examiner, are we going to delve into the realms of speculation?

Trial Examiner Myers: Were you ever admonished by the mate for loafing on the job?

A. No, sir.

Trial Examiner Myers: Did anybody else admonish you about loafing on the job?

A. No, sir.

Trial Examiner Myers: Did you ever loaf on the job?

A. Well, I don't know whether I did or not.

Trial Examiner Myers: Whether you were caught at it or not caught at it did you ever loaf?

[361]

A. Oh, it is possible that I did.

Q. (By Mr. Van Dusen) Isn't it a fact that on two occasions the mate found you in your bunk playing cards in your pajamas?

A. I don't wear any pajamas.

Q. You never wear them?

A. I do wear them when I go to the Marine Hospital.

(Testimony of J. Gordon Rosen.)

Q. Do you wear them up in the cold climate up north?

Trial Examiner Myers: Maybe he wears a night shirt.

Q. (By Mr. Van Dusen) What do you wear?

Mr. Wright: I object to the materiality of it.

Mr. Van Dusen: No, sir, it is not immaterial.

Trial Examiner Myers: Let me decide. I overrule the objection.

A. I just wear a singlet. Singlet underclothes; underwear.

Q. (By Mr. Van Dusen) You slept in that?

A. Yes, sir.

Q. Well, isn't it a fact that Chief Tranberg found you in that outfit on occasions when you were supposed to be on duty? A. No, sir.

Q. Now, on the SS "Washington" you were an A. B., were you not? A. Yes, sir, I was.

Q. Who was your immediate superior on the SS "Washington"? [362] A. The boatswain.

Q. And who was his superior? Who was the mate? A. Mr. Johanson.

Q. So, he had the same position as Tranberg had on the "Nevada", is that correct?

A. Yes, sir.

Q. And issued the order to the boatswain and the A. B.'s, such as yourself, isn't that correct?

A. Yes, sir.

Q. Now, isn't it a fact that Chief Johanson on

(Testimony of J. Gordon Rosen.)

several occasions found you not attending to your duties as an A. B.?

A. Not that I know of, no.

Q. It is possible? He may have.

Mr. Wright: Mr. Examiner, I object again to delving into the realms of speculation as to whether or not he possibly might have.

Mr. Van Dusen: This is cross examination, Mr. Examiner.

Trial Examiner Myers: This is cross examination and I think he is entitled to more latitude. I will overrule the objection.

Mr. Wright: It seems to me the proper question would be: Did he loaf?

Trial Examiner Myers: You may proceed if you will please, Mr. Van Dusen.

Q. (By Mr. Van Dusen) Isn't it a fact that Chief Johanson on [363] several occasions found you not attending to your duties on board the SS "Washington"?

A. Not that I remember, no, sir.

Trial Examiner Myers: Well, if he testified to that effect would he be telling the truth?

A. To what effect?

Trial Examiner Myers: To the effect that he found you on several occasions loafing.

A. No, sir, I don't believe he would be telling the truth.

Q. (By Mr. Van Dusen) Isn't it a fact that on several occasions Chief Johanson and Captain

(Testimony of J. Gordon Rosen.)

Bergman warned you that you would have to pay more attention to your duties? A. No, sir.

Q. You deny that? A. I do.

Q. Now, on the SS "Washington" you spent a good deal more time in union activities than you did on the "Nevada"?

A. Approximately the same.

Trial Examiner Myers: Well, what was the lineup of the union men on the "Washington"? Was it almost a hundred per cent unionized?

A. Yes, sir, they were approximately a hundred per cent on the "Washington".

Trial Examiner Myers: What about the "Nevada"?

A. They were approximately a hundred per cent on the "Nevada" [364] also.

Trial Examiner Myers: Which was the boat that only had one non-union man on it?

A. That was the "Nevada" on the trip to Spain.

Trial Examiner Myers: What about the other trip on the "Nevada"?

A. On the other trip there were several non-union men came aboard. This was about March 14 of 1938, and we talked to them and asked them about joining, which they did.

Trial Examiner Myers: I don't want to go into details. I just want to know how many non-union men were there on the "Washington"?

A. About two.

Q. (By Mr. Van Dusen) You say there were

(Testimony of J. Gordon Rosen.)

just two non-union men on the "Washington" of the whole crew? A. That is all.

Q. The rest were all N. M. U. men?

A. They were.

Q. Now, you didn't have to do much organizing on the "Washington" then, did you?

A. Well, they hadn't been holding any meetings on there.

Q. What is that?

A. That hadn't been holding any meetings on there previous to the time when I came aboard; Buckless, Zinkiewycz and myself; and we asked them why and Alfred Wukasch, an ordinary [365] seaman, said that when the crew did hold meetings and got organized the delegates were fired. [366]

Q. Now, did the captain of the "Washington" ever go by when you were holding one or more of those meetings?

A. No, sir, not that I know of.

Q. How about Chief Mate Johanson?

A. No, sir, not Chief Mate Johanson that I know of.

Q. You mean they never saw you holding any of those meetings?

A. It is possible they might have seen us but I didn't see them.

Q. How many attended those meetings on an average?

A. All members of the unlicensed personnel.

Q. All of them? How many? How many would

(Testimony of J. Gordon Rosen.)

that be? A. All except the men on watch.

Q. Approximately how many?

A. It would be about 17 or 18.

Q. That would ordinarily be noticed?

A. Yes, sir, it would.

Q. So it is possible that the captain and the chief mate did notice those meetings?

A. It is possible, yes.

Mr. Wright: I object to that for the reason that it calls for a conclusion of the witness about which he has no knowledge and has already testified he has no knowledge.

Trial Examiner Myers: Will you read the question, Mr. Reporter? [367]

(The last question and answer were read.)

Trial Examiner Myers: Objection overruled.

Q. (By Mr. Van Dusen) Now generally, what was the nature of the union activities on the SS "Washington"?

A. The nature of the union activities?

Q. Yes.

A. The nature of the union activities was to secure minimum working rules as set forth in the Tanker Agreement.

Q. You knew The Texas Company had not signed that agreement?

A. Yes, sir, that is right.

Q. You wanted to secure them for that ship?

A. Yes, sir, for that ship.

Q. Did you want to secure them for all the

(Testimony of J. Gordon Rosen.)

ships of The Texas Company?

A. No, sir, I just wanted the master of that ship to live up to that letter from Captain Roney which stated that they would live up to the best conditions in the industry.

Q. They didn't say they would live up to the Standard Tanker Agreement?

A. Well, that is only the minimum conditions in the industry.

Q. I mean they didn't say that they would live up to the conditions of the Standard Tanker Agreement?

A. That letter said they would live up to the best condi- [368] tions in the industry.

Q. But they didn't say they would live up to the conditions of the Standard Tanker Agreement?

A. No, sir.

Q. What other activities? What else?

A. We sent out wires to Captain Roney and went up to talk to the mate and captain—of course, he refused permission as delegate—drafted letters to be sent to Captain Roney.

Q. Now you say you sent telegrams?

A. Yes, sir.

Q. Did the captain know you sent those telegrams? A. I don't believe he did, no, sir.

Q. Didn't you get his approval?

A. They were sent from shore.

Q. Sent from shore? A. Yes, sir.

Q. Not sent from the ship? A. No, sir.

(Testimony of J. Gordon Rosen.)

Q. Mr. Rosen, this open letter to The Texas Company, which is Exhibit No. 9 introduced by the Labor Board, you are on that as ship delegate, Gordon Rosen, is that correct? A. Yes, sir.

Q. And you prepared that?

A. With the aid and assistance of other members of the crew.

Q. And you approved the statements made in that open letter? [369]

A. We signed it as a matter of course on that ship.

Q. I mean it is a statement which you signed and the facts stated in there are true according to your knowledge, is that correct?

A. Well, I wouldn't say to that.

Trial Examiner Myers: Well, will you pick out what part of that letter it is which you say is not true?

Q. (By Mr. Van Dusen) Well let me ask this one preliminary question: You would not sign a statement that is not true? You would not make a statement that is false?

A. Not if I could avoid it.

Q. Is there anything false in this letter?

A. Not that I absolutely know of, no.

Q. You checked everything before you sent it out?

A. Well the letter was sent out by the crew.

Q. But you were one of those preparing it?

A. Yes, I was one of those preparing it.

(Testimony of J. Gordon Rosen.)

Q. And you read it? A. Yes, sir.

Q. And you checked everything that was said in there?

A. Well I just concurred in it as a matter of course.

Q. As a matter of course? A. Yes.

Q. Is everything in there true according to your knowledge? Every statement made in there, is that true? [370]

Trial Examiner Myers: Show him the exhibit.

Mr. Van Dusen: Do you want to see it?

A. There are quite a few statements made in there.

Q. (By Mr. Van Dusen) Well, you said you helped prepare it and you read it and you approved it.

Trial Examiner Myers: Is that the one you said you drafted?

A. Yes, sir, with the assistance of other members of the crew.

Trial Examiner Myers: Well, read it over carefully and let's see what you think about it.

Q. (By Mr. Van Dusen) Have you read it?

A. Yes, sir.

Q. Is everything in there true?

A. It is generally believed by N. M. U. men that it is true.

Q. Do you of your own knowledge know that everything in there is true?

A. I couldn't swear it is true, no, sir.

(Testimony of J. Gordon Rosen.)

Q. Would you put anything in a statement like this that is not true?

A. Just what do you mean by that?

Q. This is a letter that went to all Texas Company seamen, is it not? A. Yes, sir. [371]

Q. Now would you mislead them? Would you want to mislead them?

A. No. It is not an attempt to mislead them.

Q. Well, is everything in there true?

A. It is generally believed to be true by Texas Company men.

Q. Don't you believe you ought to check it carefully before sending a statement like that out?

Mr. Wright: I object to it because it is irrelevant, immaterial and argumentative.

Trial Examiner Myers: Overruled.

A. You mean absolutely check up on each and every single statement?

Q. (By Mr. Van Dusen) You make some general statements and I want to know whether they are true.

A. They are generally believed to be true.

Q. Do you know whether or not they are true?

A. I have heard other sailors talking about this——

Trial Examiner Myers: Do you believe them to be true?

A. I believe them to be true to the best of my knowledge.

(Testimony of J. Gordon Rosen.)

Mr. Martin: When you wrote them, did you believe them to be true?

A. When I wrote them with the assistance of others I did believe them to be true.

Q. (By Mr. Van Dusen) At the time you wrote them, did you [372] believe them to be true?

A. I believed most of them to be true. [373]

Q. Not all of it?

A. I couldn't swear to all of it absolutely, definitely.

Q. Let's look at something. "Verbal contracts with The Texas Company are worthless." What verbal contracts are you referring to?

Mr. Martin: Mr. Examiner, on behalf of the Board I would like to point out that this letter was offered and received, not for the statements made in it, which have no bearing on this case other than the fact that they are statements. This letter was offered and received yesterday for the sole purpose, and in the course of some discussion it was pointed out that that was the sole purpose, of showing that Mr. Rosen was engaging in union activities by writing circular letters; or at least one; and that there was ample opportunity for those activities, which he put in writing, to come to the notice of officers of the company; that is, of officials of the company or officers of the ships; and I submit, in view of the limited reason for which this letter was offered and received yesterday, that the present line of question-

(Testimony of J. Gordon Rosen.)

ing should not be allowed and is not material to the issue.

Mr. Van Dusen: Now, Mr. Examiner, I want to question him for two reasons; one, to show that this is not legitimate union activities, but propaganda to stir up trouble; and, secondly, to test this man's credibility.

Mr. Wright: May I interpose the further objection that [374] this union is not here on trial and until it is brought to trial for some of its activities, I think the questioning is certainly immaterial and irrelevant. Whether or not this man engaged in union activities that Mr. Van Dusen believes to be legitimate is immaterial. The fact remains that he did do it; that it was union activity and that this union activity, legitimate or illegitimate, may have led to his discharge. That of course leads us to the conclusion that all this questioning is irrelevant and immaterial and has no bearing on this case at all.

Mr. Van Dusen: This man is charging us with unfair labor practice and discrimination against him because of his union activities and in support of that charge he introduces this particular letter as evidence of his engaging in union activities. I want to show that it is not legitimate union activities and I want to test his credibility to show that he may be lying at times and I want to go further into that.

Mr. Martin: Mr. Examiner, in Section 2 of the Wagner Act there is no definition of union activities. The issue is not whether in somebody's esti-

(Testimony of J. Gordon Rosen.)

mation the activities engaged in were legitimate.

I should like to say further that we must not veer into what has been referred to as a discussion of propaganda, because propaganda has acquired altogether too broad a meaning for our handling within the narrow scope of our issues. [375]

Mr. Van Dusen: Mr. Examiner, if this letter was sent out to stir up antagonism against The Texas Company then it was not union activities under the Act.

Mr. Wright: Mr. Examiner, may I make this statement, please, sir: I don't believe the Wagner Act or any other act or law gives to The Texas Company a right or an interest in the welfare and legitimacy of a union. It seems to me it is not the function of The Texas Company to try to become the guardian angel of legitimate activity of the union.

Mr. Van Dusen: I am talking about this man; his activities.

Mr. Wright: Or his activities; a guardian angel of his activities.

Mr. Van Dusen: I disagree. [376]

Trial Examiner Myers: I will overrule the objection.

Q. (By Mr. Van Dusen) Now, Mr. Rosen, you make the statement here that verbal contracts with The Texas Company are worthless. Are you referring to——

A. Referring to the letter from Mr. J. C. Roney

(Testimony of J. Gordon Rosen.)

stating that they will live up to the best conditions in the industry, and will not discriminate against any union man, and that they will listen at all times to complaints of seamen and so forth.

Q. You testified in this trial that the captains and the chief mates and Mr. Hand listened to you and had talks with you, did you not?

A. They did, yes.

Q. That is something you cannot complain about, is it? A. They didn't always listen——

Q. I mean they talked to you?

A. They talked to us, yes.

Q. Then you have no complaint on that at all?

A. Yes, I do.

Q. They did talk to you?

A. What do you mean.

Q. The captains and the chief mates talked to you? A. Yes.

Q. And then you presented your grievances?

A. They wouldn't allow us at times.

Q. You presented your grievances to them?

[377]

A. We tried to present our grievances. Sometimes they wouldn't recognize us.

Q. Mr. Roney didn't say in his letter that every grievance you had he would comply with?

A. No, sir, but he said in his letter that he would give the crews the right to select a man to represent them, or the crews should select a man to speak for them.

(Testimony of J. Gordon Rosen.)

Q. You did do that, didn't you?

A. Yes.

Q. And you spoke to the captain and the chief mate, did you?

A. We did.

Q. Did you?

A. Yes. They didn't recognize us as such.

Q. Did he say that he was going to give you what you wanted?

A. That is not the point.

Q. They spoke to you. Mr. Roney said in his letter, you say, that you should select representatives, and that the captain would talk to you?

A. He said they would allow them to bargain for the crew.

Q. You did bargain?

A. They wouldn't recognize us.

Q. You bargained, you talked?

A. Talked to them, but they wouldn't recognize the representatives.

Q. You mean they wouldn't give you what you wanted? [378]

Mr. Wright: Mr. Examiner, I believe Mr. Van Dusen is calling for a conclusion.

Trial Examiner Myers: He changed it. Is that what you mean?

Q. (By Mr. Van Dusen) What do you mean by bargaining?

A. Presenting our grievances, and seeing if we can't get a dispute settled by elected representatives of the crew.

Q. All right, you did that, didn't you?

(Testimony of J. Gordon Rosen.)

A. Tried to do it.

Q. You saw the captain and the chief mate, didn't you, and you had talks with them, didn't you?

A. Up to the point where we announced ourselves as the union delegate or the crew's representative.

Q. But they talked to you?

A. Up to that point.

Q. Now, what other contracts were made with The Texas Company?

A. That is the verbal contract I am referring to.

Q. I say, verbal contract.

A. There are six provisions in that, in the letter from Mr. J. P. Roney.

Q. You consider each provision as a separate contract, is that right? A. Yes, we do.

Q. Now you say: "It has been pointed out to this company [379] that the Standard Tanker Agreement was the minimum set of conditions that the National Maritime Union would agree to exchange for a signed contract." Who pointed that out to The Texas Company?

A. We sent a letter to Captain Hand also to Captain Roney.

Q. Did you retain copies of those letters?

A. I believe they are in the files of Mr. Ames.

Mr. Van Dusen: May I ask Mr. Wright to produce those letters referring to the Standard Tanker Agreement?

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Have you got the originals?

Mr. Van Dusen: I haven't seen them.

Mr. Wright: It may take us a while to find them. We will do our best.

A. That can refer to letters sent to officials of The Texas Company. With them, we include telegrams.

Q. (By Mr. Van Dusen) All right. To whom were the telegrams sent? A. To Mr. Roney.

Q. Have you a copy of the telegram?

A. No, sir.

Trial Examiner Myers: Did you make a copy?

A. We made a copy, but it was lost.

Mr. Martin: Mr. Examiner, may I suggest that to the best of his recollection, Mr. Rosen testified on direct examination [380] yesterday as to the content of a telegram he sent Captain Roney from Chester, Pennsylvania.

A. Yes, from the Pennsylvania Railroad depot.

Mr. Martin: If my memory serves me correctly, Mr. Rosen testified on direct examination that he himself sent only one telegram to Captain Roney, but that he is aware that another telegram was sent to Captain Roney at about that time concerning the same subject.

A. That is right, yes, sir.

Q. (By Mr. Van Dusen) You don't know what was in that second telegram?

A. I read a copy of it.

(Testimony of J. Gordon Rosen.)

Q. Do you know what was in it?

A. About Captain Bergman refusing to recognize the elected delegates of the crew, and refusing to live up to the minimum of the Standard Tanker Agreement.

Q. To the best of your recollection, that was it?

A. It was.

Q. Who sent it?

A. Mr. Cline, radio operator.

Q. He signed it? A. He did.

Q. You read it? A. I did.

Q. To whom was it addressed? [381]

A. To Mr. J. P. Roney.

Q. What was the date it was sent?

A. The date was about, on or about July 3.

Q. From where?

A. Western Union office in Marcus Hook, Pennsylvania.

Q. Now, you say: "There are at least twenty different clauses in these minimum conditions that The Texas Company refuses to live up to." Will you name those, in the Standard Tanker Agreement?

A. I have a copy of the Standard Tanker Agreement, I believe.

"Section 3. The company shall permit, by the distribution of passes, the authorized representatives of the Union to board the company's vessel for the purpose of consulting with the unlicensed personnel employed thereon."

(Testimony of J. Gordon Rosen.)

Q. That is one? A. That is one.

“Section 5. Any disputes or grievances arising in connection with the terms and provisions of this agreement shall be settled according to the following procedure:

“The unlicensed personnel——”

Trial Examiner Myers: What are you doing?

Q. (By Mr. Van Dusen) You don't have to read it.

A. It refers to the election of delegates, or presentation of complaints to his immediate superior, and the procedure [382] involved in settling controversies.

Q. You had no trouble on the “Washington” presenting complaints to the captain?

A. I was not recognized as a delegate.

Q. You had no trouble presenting complaints?

A. Up to the time I announced myself as a representative of the crew.

Q. You had no difficulty presenting them to the captain? You could present them?

A. We talked to him.

Mr. Wright: May we have it understood that we have our objection to all this line of questioning.

Trial Examiner Myers: That is correct, the same objection and the same ruling.

Mr. Wright: And it carries with it our exception.

Trial Examiner Myers: Yes, sir, it automatically carries your exception.

Q. (By Mr. Van Dusen) That is two?

(Testimony of J. Gordon Rosen.)

A. "The company agrees to post on the bulletin board of each vessel a list of rules which constitute cause for which members of the unlicensed personnel may be discharged without further notice.

"For other offenses not on the posted list, members of the unlicensed personnel shall not be discharged without first having been notified in writing that a repetition of the of- [383] fence will make him liable to dismissal. In the event that the members of the union feel that any of the rules or regulations promulgated by the company are inconsistent with the terms of this agreement, such members agree to make proper and orderly representation as outlined under the grievance machinery of Section 5.

"The company shall comply with such laws and regulations as the Secretary of Commerce shall issue through the Bureau of Marine Inspection and Navigation as to all matters relating to manning, quarters and equipment, and construction and arrangement of the ship."

Q. You say The Texas Company does not comply with the regulations of the Department of Commerce?

A. I believe there was a complaint filed on the SS "Washington" with the steamboat inspectors.

Q. Who filed the complaint?

A. Delegates on the ship.

Q. How about the SS "Nevada"?

A. I don't believe there was any complaint filed.

(Testimony of J. Gordon Rosen.)

Q. How about the SS "California"?

A. None filed on her.

Q. You do not mean that on those two ships The Texas Company did not comply with the Department of Commerce regulations, do you?

A. I am just reading the Tanker Agreement.

[384]

Q. You didn't mention that on those two ships The Texas Company complied with the Department of Commerce regulations, did you, in this letter?

A. There would be no purpose in it.

Q. You state there are twenty conditions The Texas Company does not comply with?

Mr. Wright: Mr. Examiner, I object for the reason that the instrument speaks for itself.

Trial Examiner Myers: That would be true. It is offered for a limited reason, and that is the reason I am permitting him to go into it. You can't put a statement in for a specific thing, and then say it speaks for itself on all the other matters.

Q. (By Mr. Van Dusen) Proceed.

A. "In those outports where there are no regular longshoremen available, members of the crew may be allowed to drive winches for handling cargo, or handle cargo, and for such work they shall be paid, in addition to their regular monthly wage, the overtime rate. This section shall not be so construed as to be applicable to any work where longshoremen are not available due to labor trouble."

Q. You say The Texas Company does not have

(Testimony of J. Gordon Rosen.)

in effect conditions such as you have mentioned?

A. They have never given us those conditions in writing.

Q. You say in writing? [385]

A. Yes, sir, verbally or written either.

“When additional certified men are hired for temporary day work on board vessels in port to assist the regular members of the crew on the work ordinarily performed by them, the rate of pay shall be six dollars per eight hour day, with a minimum of one-half day’s pay in any one day.”

Q. And that has never been paid by The Texas Company? The Texas Company have never paid any such?

A. I don’t believe they have ever paid any such amount on our ships, to my knowledge.

Q. If they never put them on, how do you know about that? A. To my knowledge.

Q. All right.

A. “When members of the unlicensed personnel in the deck and engine department are required to work in addition to their regular watches because a vessel sails short handed, they shall be paid for the extra time at the overtime rate.”

Q. The Texas Company has never paid any such overtime?

A. On the “Washington” we sailed short handed in the engine department, and they were paid at a rate about half of that.

Q. Have they ever paid the full rate?

(Testimony of J. Gordon Rosen.)

A. Not under this provision.

Q. Have they ever paid an amount equal to that? A. They have a different working rule.

Q. Does the seamen get approximately the same thing? [386]

A. Not under The Texas Company working rules.

Q. All right.

A. "After one year of continuous service from April 1, 1938, every unlicensed member of the crew shall be entitled to an annual vacation of twenty-one days with pay."

Q. What vacation does The Texas Company seamen get? A. I believe they get seven days.

Q. With pay?

A. One week. This refers to twenty-one days.

"If an employee has six months continuous service, he may be granted a vacation of not more than ten days with pay, but such period will be deducted from the twenty-one days."

The Texas Company has no such provision. [387]

Q. Are these separate clauses you are reading?

A. These are provisions or clauses. They are clauses in different sections.

Q. Separately numbered, are they?

A. The sections are numbered, and the clauses are under those sections.

Q. You do not mean that each one is separately numbered; it is not a separate number for each clause you are reading?

(Testimony of J. Gordon Rosen.)

A. No. This section refers to each clause in that section.

“If after six months continuous service an employee is terminated for any reason he will be entitled to receive, in addition to his regular pay, one week’s pay as a vacation allowance at time of termination. No other cash allowance in lieu of vacations shall be made. Any employee discharged for cause has the right of appeal under the grievance procedure provided in Article I, Section 5.”

The Texas Company has no such provision.

“If an employee is terminated for any reason with less than six months continuous service no vacation pay will be allowed.”

Q. That is the same as the other, isn’t it? You wouldn’t call that something separate?

A. The overtime. “Overtime shall commence at the time any employee shall be called to report for work outside of his regular schedule, provided such member reports for duty within [387-A] fifteen minutes, otherwise overtime shall commence from the actual time such employee reports for duty; and such overtime shall continue until the employee is released.”

The Texas Company does not live up to this rule.

Q. What does The Texas Company do?

A. A half hour, instead of a full hour.

“Where overtime worked is less than one hour overtime for one full hour shall be paid. Where the overtime worked exceeds one hour the overtime

(Testimony of J. Gordon Rosen.)

work performed thereafter shall be paid for in one-half hour period, a fractional part of such period to count as one-half hour."

Q. That is part of your overtime?

A. Yes, a different section.

"When traveling in the course of employment from one vessel to another or from one port to another unlicensed personnel shall be paid regular wages while en route and shall be provided with necessary transportation, and subsistence at the rate of \$3.00 per day, except where subsistence is included with transportation. When traveling overnight, a berth shall be provided.

"When any employee is left at any port and when such employee would ordinarily be entitled to transportation under the law, the company shall forthwith provide transportation back to the port of signing on, and may utilize its own vessels for that purpose." [388]

Q. That is required by law, isn't it? A. No.

Q. Do you mean to say that any company can take a seaman from Port Arthur up to some east coast port, and not send him back?

A. The Texas Company has fired men in the northern ports and not paid their transportation back.

Q. Do you know that of your own knowledge?

A. I do.

Q. Would you mind giving the names?

A. George Prince.

(Testimony of J. Gordon Rosen.)

Q. What boat? A. SS "Washington".

Q. Any other? A. Earl Alverson.

Q. What boat?

A. I don't know which boat he was fired off of.

Q. About when was that?

A. Oh, some time ago.

Q. How long?

A. Approximately six months.

Q. How long was it when Prince was fired?

A. Prince was fired off the SS "Nevada", not the "Washington".

Q. When?

A. The last trip she made up north. [389]

Q. About when was that?

A. Ten days ago, approximately.

Q. Wait a minute. The circular was gotten out before then, wasn't it?

A. Not before Alverson was fired, no, sir.

Q. Before the other man?

A. Yes. There were others fired too.

Q. Name them.

A. I don't remember them at this particular time.

Q. You don't remember their names?

A. Not particularly now. They just came up to me and related the circumstances, that they got fired.

Q. All right.

A. Traveling in the course of employment from one vessel to another, I read that.

(Testimony of J. Gordon Rosen.)

Q. Yes.

A. "The following items shall be supplied to the unlicensed personnel; (1) A suitable number of clean blankets; (2) white sheets and pillow cases, which shall be changed weekly; (3) face and bath towels, which shall be changed twice weekly."

We had a lot of discussion on the "Washington" about that.

Q. Does The Texas Company give that?

A. If you are strong enough organized to get it, yes.

Q. Does The Texas Company give it on any of its ships? [390]

A. I believe they have granted that request.

Trial Examiner Myers: You mean they try to do it? A. They try to do it, yes.

Q. (By Mr. Van Dusen) All right.

A. "All quarters and mess rooms shall be adequately ventilated and a sufficient number of fans to secure such ventilation shall be installed."

Q. What about that?

A. Well, on the "Nevada" and the "Washington" they were very hot, extremely hot in the summer time.

Trial Examiner Myers: What was hot?

A. The mess room.

Q. (By Mr. Van Dusen) You mean these conditions would remedy that?

A. They would remedy it, yes, if ventilation was provided for.

(Testimony of J. Gordon Rosen.)

Q. Did you bring it to the attention of the captain?

A. Yes, we brought it to the attention of the captain.

Q. How about the "California"?

A. No, not on the "California".

Q. All right.

A. "A sufficient number of lockers shall be installed so that each employee shall have one full length locker with sufficient space to stow a reasonable amount of gear and personal effects." [391]

Q. What about that?

A. On the "Washington" there were six men in one room, and it was very crowded in there, and the locker provided for was very small.

Q. How about the "Nevada"?

A. The lockers were sufficient on there.

Q. The "California"? A. Sufficient.

"All quarters are to be kept free from vermin in so far as possible."

Q. They did as much of a job about that as any company, didn't they?

A. No. The Gulf Company has a man coming around, and they fumigate or spray a certain compound on the decks and under the lockers and in the mess rooms, and so forth, for vermin. The Texas Company, I had never seen that done.

Q. Does the union require that?

A. They require some such provision made.

Trial Examiner Myers: Was there any vermin

(Testimony of J. Gordon Rosen.)

on the boat you were on?

A. Cockroaches on there, yes, sir.

Q. (By Mr. Van Dusen) Did you find any on the "Nevada"?

A. Yes.

Q. "California"?

A. Yes. [392]

Q. Find any on the Gulf boat?

A. Not many, no, sir.

Q. Nothing like the Texas?

A. No.

Q. Vermin don't like the Gulf boats?

A. No. A man came around every trip.

Q. You didn't need that if there were no cockroaches on there.

A. They came round just the same.

"A refrigerator shall be furnished for night lunches for the use of the unlicensed personnel. Such refrigerators, if not electric, shall be adequately supplied with ice for such purpose."

No provision was made on any of The Texas Company ships for that.

Q. On those three ships?

A. No, sir.

Q. You mean they didn't have any night lunch?

A. No, no refrigerator.

Trial Examiner Myers: What did you get?

A. We got a night lunch.

Q. (By Mr. Van Dusen) Was it a good lunch?

A. It was put out in the hot weather, and it became very unappetizing in two or three hours.

Q. They didn't have such good cooks, the Texas Company? [393]

A. The cooks were all right.

Q. The food wasn't good?

(Testimony of J. Gordon Rosen.)

A. No, I don't think it was.

Q. But you still like The Texas Company ships?

A. That is not the question.

“When board and room are not furnished, unlicensed members of the crew shall receive the following allowance; (a) In lieu of breakfast, 60 cents; (b) In lieu of dinner, 75 cents; (c) In lieu of supper, 75 cents; (d) In lieu of quarters, \$1.25 per night.”

Q. Did The Texas Company do that?

A. No provision in the working rules.

Q. On any Texas Company ship?

A. Not that I know of, not this scale.

Q. You could eat free on The Texas Company ship when it was in port, couldn't you?

A. In port?

Q. Yes.

A. Yes, if I was employed on that ship. This refers to when ship goes into drydock and they are repairing quarters, and the crew has to go ashore.

Q. There are times when it is in drydock when they can eat on board?

A. Unless they are repairing the crew's quarters. That is the provision for that. [394]

“The company agrees that if and when the union is certified as having a majority of the unlicensed personnel aboard company vessels and during the period that this agreement is in effect members of the union shall be given preference of employment at all times if said members are satisfactory to the

(Testimony of J. Gordon Rosen.)

company to fill the respective positions; provided however that this section shall not be construed to require the discharge of any employee who may not desire to join the union, nor shall it apply to re-shipment of former employees and particularly employees who have been absent on account of illness, accidents, vacations or leaves of absence. To protect service rights, the company may transfer unlicensed personnel in its employ from one vessel to another or from one port to another."

The Texas Company does not agree to that.

Wage schedule, unlicensed personnel. [395]

Trial Examiner Myers: Is it the same schedule?

A. No, it is not.

Q. (By Mr. Van Dusen) In certain stations doesn't The Texas Company pay more than those rates, in respect to certain of the unlicensed personnel? A. I don't believe they do.

Q. Are you sure?

A. Not on any ship I was on.

Q. Doesn't The Texas Company pay as well as any of the companies signing those agreements?

A. They do in most instances.

Q. All right.

A. I am pointing out two instances where we had a discussion on the "Washington".

Q. But don't they comply with that?

A. Generally.

Q. But specifically, not always?

A. Not specifically.

(Testimony of J. Gordon Rosen.)

Q. All right, tell us?

A. Well, on the "Washington" the water tender and fireman was getting less money than the scale, which was \$90.00, and they notified us about it. And the steward's department, the galley man was getting less money than the union scale.

Q. But certain of the unlicensed personnel gets more than the rates provided there, isn't that so?

[396]

A. I don't believe any of them notified me to that effect.

Q. You don't know of any?

A. No, I don't know of any getting more.

Q. You didn't check that? A. No.

Trial Examiner Myers: What about the A. B.'s?

A. The A. B. scale is \$85.00 a month, the same as The Texas Company. The hours of work, day workers:

"The hours of work for day workers shall be eight hours per day week days between 8:00 a. m. and 5:00 p. m., with an hour off for lunch, and from 8:00 a. m. to 12:00 noon on Saturdays."

We had a discussion on the "Washington" about that; turned to on day work after 5:00 o'clock, and we didn't receive any overtime.

Q. That is a specific instance. How about generally? A. Generally that is the rule.

Q. Generally they met that rule? A. Yes.

"At sea and in all open harbors or road sheds the crew shall stand regular watches as required by the

(Testimony of J. Gordon Rosen.)

master, but no unnecessary work shall be performed on Saturday afternoons, Sundays or holidays, or between the hours of 5:00 p. m. and 6:00 a. m. However, no chipping nor scaling shall be required between 6:00 a. m. and 8:00 a. m.” [397]

We had an instance on the “Nevada” where after we had obtained overtime for this particular type of work the captain turned around and said, you are going to sooge and paint on Saturday afternoon and Sunday in order to receive this overtime.

Q. But didn’t they comply with that?

Trial Examiner Myers: That is the time he threatened to do it. Did he actually do it?

A. Yes, he actually did it, next trip.

Q. (By Mr. Van Dusen) Generally The Texas Company ships have complied with that? You are referring to a specific instance?

A. Yes, I am referring to a specific instance where we pointed it out, to our knowledge.

Q. You have a specific instance. You have specific instances in cases when they have signed agreements, don’t you? A. That is true.

Q. And you have to make a complaint through the deck delegate? A. Yes, that is true.

Q. The Texas Company complies just as much as most of them with signed agreements like that?

Mr. Wright: I object because it calls for a conclusion.

Trial Examiner Myers: Overruled.

A. I couldn’t say they will comply with that,

(Testimony of J. Gordon Rosen.)

because we bring this up to them. [398]

Q. (By Mr. Van Dusen) I say, except for specific instances, they comply?

A. When we bring any of those up on a specific instance, then is when we have the refusal.

Q. Well, you have the same trouble where they sign the Tanker Agreement?

A. We have the machinery to arbitrate and settle under the Agreement, but not in The Texas Company.

Q. But you have already referred to——

Trial Examiner Myers: Let's proceed with the next one.

Q. (By Mr. Van Dusen) Proceed.

A. "The duties of the quartermaster, when carried, at sea shall be to steer the vessel when the vessel is not fitted with automatic steering gear. When the vessel is fitted with automatic steering gear, he may assist in the maintenance of the wheel house and bridge deck. In ports he shall stand the gangway watch and assist the senior officer in charge."

We had quite a discussion on the "Washington".

Q. That is a specific instance? A. Yes, sir.

Q. Not a general condition?

A. I don't know whether it is general or not.

Q. You don't know whether it is or not?

A. No, sir; not to my knowledge.

"Pumpmen at sea: The hours of work for pumpmen shall be [399] from 8:00 a. m. to 12:00 noon; from 1:00 p. m. to 5:00 p. m. week days, and from

(Testimony of J. Gordon Rosen.)

8:00 a. m. to 12:00 noon Saturdays. For all work performed in excess of these hours he shall be paid at the regular overtime rate. Pumpmen's duties shall consist of handling fuel oil, ballast, cargo and tank cleaning equipment and all work necessary for the maintenance and operation of cargo pump auxiliaries, general cargo lines and all deck machinery. He shall not be required to chip paint, scale paint, polish brass, or do any work that is not considered maintenance for the machinery under his care. He shall not be required to make heavy installations where his work is customarily done by shore gangs. This, however, shall not be construed to apply to refuels and replacements of worn out equipment."

On the "Washington" we had an instance where the pumpmen went down in the tanks and repaired equipment, work ordinarily done by the shore gang, and we tried to get overtime for it, and were refused.

Q. Except for specific instances, generally they comply with that, don't they?

A. This instance was what we were pointing out, referring to.

Q. But that was a specific instance, and not general?

A. Specific and general instances.

Q. Show me where it says that? [400]

Mr. Wright: I would like to object to this. I believe it is a matter of construction for the Board

(Testimony of J. Gordon Rosen.)

and the Examiner. We might quibble for days over this.

Trial Examiner Myers: Overruled.

A. And right here: "The Texas Company promises the best." Is that right?

Q. (By Mr. Van Dusen) No, we are talking about the provisions of this agreement which you say The Texas Company does not comply with?

A. Yes.

Q. I am asking you where that is?

A. We just picked it out.

Q. Do you see anything about specific instances there?

A. This is just a general statement.

Q. Just a general statement?

A. Yes, sir.

"Pumpmen in port: At the discharge port, the first pumpmen's hours are to begin with the instructions to start discharging cargo or with the instructions to stand by to discharge cargo; such time to be continuous without deducting time for meals if such time is twenty minutes or less. If carried, the second pumpman's eight hours are to begin when he relieves the first pumpman. Each pumpman is to work eight hours in each twenty-four hours, and any additional time worked shall be considered overtime." [401]

This same instance occurred on the "Washington".

(Testimony of J. Gordon Rosen.)

Q. It is a specific instance you have in mind?

A. Yes, sir.

Q. Generally it does not apply?

A. I am not so familiar with the engine department as I am with the deck.

Q. You are not quite sure The Texas Company does not comply generally with it?

A. The others who assisted me in drawing up the letter spoke of general conditions.

“Oilers in port: Oilers in port on reciprocating, turbine and motor vessels if on watch at anchor or at the dock, provided they are not required to tend water, shall assist in making repairs between the hours of 6:00 a. m. and 5:00 p. m. No work outside of the routine standing of the anchor watch shall be required of the oilers between the hours of 5:00 p. m. to 6:00 a. m.”

Q. Again you are referring to specific instances?

A. Specific and general.

“When in port and watches broken, their hours shall be those of day workers, and shall assist with the repairs in engine department as directed by the engineer in charge.”

Q. What about that?

A. There was some discussion on that on the “Washington”. I just don’t remember what the discussion was. [402]

Q. You wouldn’t want to include that would you if you don’t remember what the discussion was?

(Testimony of J. Gordon Rosen.)

A. As I stated before, this was brought to my attention as general conditions.

Q. You personally would not want to include that?

Trial Examiner Myers: He says he doesn't remember it.

A. I don't remember exactly everything that was brought to my attention at the time the letter was drafted.

Q. You spent a lot of time on this?

A. Not an awful lot, no.

Q. Didn't you think it was very important, on a thing like this?

Mr. Wright: I object for the reason that it is argumentative.

Trial Examiner Myers: Sustained.

Q. (By Mr. Van Dusen) Please continue.

A. "Firemen at sea: On watch they shall tend the fires, clean burners, fuel oil strainers and keep their stations clean. They are not to go above the first grating, behind the boilers on shipside or on shipside abreast the boilers or below the floor plates for any cleaning or painting except to clean loose oil resulting from their work. Firemen on watch shall not be required to ship these aforementioned places. They are not to tend water unless the checks and gauges are in the fire room in which case they may be required to tend [403] water and shall be rated as fireman-water tender. For vessels fitted with more than three scotch boilers and where fire-

(Testimony of J. Gordon Rosen.)

men are required to tend water, they shall not be required to clean any station with the exception of the floor plates.

“Firemen shall assist with the blowing of tubes where vessel is equipped with mechanical tube blowing apparatus. On vessels not so equipped and where tubes are blown by hand by opening uptake doors and using hand lance, the firemen assisting shall be paid the tank cleaning rates for such time as required for this duty.”

Q. Again, that is specific.

A. Specific and general. [404]

Q. And not general conditions?

A. “Wipers, at sea and in port, shall be required to do the general cleaning and upkeep in the engine department spaces and assist in repair work as directed by the engineer in charge. When cleaning fuel oil and domestic fresh water tanks they shall receive the regular tank cleaning rate. Wipers shall also keep the wipers’ and firemen’s toilet, washrooms and quarters clean on ship’s time.”

Q. That is a specific instance?

A. To my knowledge.

“Stewards’ Department Working Rules. The hours of the stewards’ department shall be eight hours each day in a spread between 6:15 a. m. and 6:15 p. m., except for the utility man. No overtime shall be paid for the preparation and serving of

(Testimony of J. Gordon Rosen.)

regular meals and cleaning of quarters, galley, and messrooms within hours specified."

Q. What about that?

A. I think that rule is not applied in The Texas Company.

Q. Of your own personal knowledge, do you know?

A. I have seen no such provision in The Texas Company rules.

Q. Do you know whether on their ships that is not in effect? A. On the ships——

Q. On the ship you were on, of your own knowledge? A. Just on the ship I was on.

"Normal manning scale of steward's department shall be [405] as follows: Number of crew excluding stewards' department, 23 to 28, inclusive, manning scale stewards' department, 6; number of crew excluding stewards' department, 29 to 36, inclusive, manning scale stewards' department, 7."

I don't believe there is any such provision in any of The Texas Company working rules.

Q. Do you know, of your own knowledge?

A. I have never seen any.

Q. How about in practice?

A. In practice, it is my belief that The Texas Company is short handed in the stewards' department.

Q. On the ships you were on. How about the "California"? A. Even on the "California".

Q. "Nevada"? A. On the "Nevada".

(Testimony of J. Gordon Rosen.)

Q. "Washington"?

A. On the "Washington".

Q. You don't know about other ships of your own knowledge?

A. Not of my own knowledge; just what the others told me.

"Members of the Stewards' Department shall not be required to prepare and serve other than the three regular meals and prepare regular night lunches for the watches. If, on the orders of the master or commanding officer, lunches are served in addition to the three regular meals already provided for, one hour's overtime shall be paid to each man [406] actually engaged in the preparing and serving of such lunches, provided, however, that where meals are served to longshoremen and Panama Canal laborers on board any vessels, the sum of thirty cents for each person served shall be equally distributed to those actually engaged in this work, in lieu of overtime."

Q. How about that?

A. That is not in The Texas Company provisions.

Q. Is it in practice?

A. I don't believe it is.

Q. How about the three ships you were on?

A. On the three ships, it was not.

Q. How about other ships?

A. On the other ships, I don't know.

(Testimony of J. Gordon Rosen.)

“No member of the Stewards’ Department shall be required to serve coffee or meals in the engine room, nor shall they be required to enter the engine room at any time. Upon order of the Master they may be required to serve coffee or meals on the bridge.”

I don’t believe there is any such provision in The Texas Company working rules.

Q. How about in practice?

A. In practice, that is in the Stewards’ Department.

Q. You don’t know what has been done in practice? A. Not on that section. [407]

“When members of the Stewards’ Department are required to stow stores away requiring more than fifteen minutes they shall be paid overtime in addition to their regular wages at the overtime rate. Members of the Stewards’ Department shall not be required to carry stores or linens from shore to vessel or from vessel to shore.”

There is no such provision on the three ships of The Texas Company.

Q. How about in practice?

A. In practice, they are not paid overtime for this work.

Q. The other ships, you know nothing about?

A. The other ships, I do not.

“Members of the Stewards’ Department shall not be required to do chipping, scraping or painting. However, the utility man may be required to “touch

(Testimony of J. Gordon Rosen.)

up" paint when necessary."

On these three ships, I have seen the mess boy paint.

Q. A specific instance?

A. On the "Washington".

Q. You are referring to specific instances, and not to general conditions?

A. Only of my own knowledge in this case.

Q. You are not referring to general conditions; just specific instances?

A. Instances brought to my attention, yes, sir, that is [408] about all.

Q. Now of your own knowledge, you are only speaking for the three ships you were on, is that correct, of your own knowledge?

A. Yes, of my own knowledge, yes, sir.

Q. And The Texas Company has 28 ships?

A. That is right.

Q. So this statement, so far as you yourself know, does not apply to those other ships?

A. I think that letter was sent out as from the crew of the SS "Washington".

Q. I say, so far as you yourself know, so far as you yourself know about the other ships, the other 25 ships——

A. Only what people that had been on the other ships told me. [409]

Q. But you still don't know?

A. Of my own knowledge, I have never been on the ship, no.

(Testimony of J. Gordon Rosen.)

Q. And you yourself didn't check those statements personally, those conditions personally?

A. Those conditions?

Q. On the other ships.

Trial Examiner Myers: He has never been on the other ships.

Mr. Van Dusen: All right.

Q. Now you said: "After long wrangles with the captains and heads of the departments the friction and irritation has produced enough heat and ill feeling that the port officials are forced to step in again." What did you mean by that?

Mr. Wright: Mr. Examiner, if this line of questioning has any relevancy at all its relevancy is with respect to the credibility of this witness. For approximately one hour Mr. Van Dusen has gone into the credibility of this witness, and I believe that is certainly ample time for even Mr. Van Dusen to decide the credibility of this man, and I therefore object to any further questioning along this line.

Trial Examiner Myers: Overruled.

Mr. Van Dusen: Will you read that question, please?

(Question read.)

Q. What did you refer to there? [410]

A. Referring to the instance on the "Nevada" and the "Washington".

Q. What port officials stepped in, and under what circumstances?

(Testimony of J. Gordon Rosen.)

A. On the "Nevada" we had a discussion—
Trial Examiner Myers: What man?

A. First, we had a discussion with the mate,
and then with the captain on the ship, Swanson.

Q. (By Mr. Van Dusen) What port official?

A. Mr. Hand.

Q. You are referring to a Texas Company official.
A. Yes.

Q. Not an outside official? A. No, sir.

Mr. Williams: Mr. Examiner, we worked yesterday until a quarter to one. I suggest that we have an adjournment now. I think we are practically through with this witness. This is a good time to adjourn.

Trial Examiner Myers: You mean you want to adjourn now for lunch?

Mr. Williams: That is what I would suggest.

Trial Examiner Myers: Have you any objection to adjourning for lunch now?

Mr. Martin: Only that if we can finish with this witness it will release him. [411]

Mr. Van Dusen: Judge Williams thinks he might have a question or two to suggest to me.

Trial Examiner Myers: We will adjourn now for lunch, and get back here at 1:00 o'clock. Does that suit you?

Mr. Williams: I think 1:30 would be better.

Trial Examiner Myers: All right, 1:15.

(Thereupon, a recess was taken until 1:15 o'clock p. m.) [412]

(Testimony of J. Gordon Rosen.)

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:15 o'clock p. m.)

Trial Examiner Myers: Are you ready to proceed, gentlemen?

Mr. Van Dusen: Are you ready, Mr. Martin?

Mr. Martin: Yes, I am ready. Thank you.

J. GORDON ROSEN

resumed the stand and testified further as follows:

Cross Examination

(Continued)

Mr. Van Dusen: Mr. Examiner, I have here a certified copy of the shipping articles covering the trip of the SS "Nevada" to Spain, which is a foreign trip, and they are signed in the presence of the U. S. Commissioner. I would like to ask Mr. Martin if he will accept these. Otherwise I will have to subpoena the Commissioner and then have Mr. Rosen identify his signature.

(Discussion off the record.)

Mr. Martin: Let the record show that counsel for the Board is willing to accept these shipping articles for what Mr. Van Dusen believes them to be and states to me personally that they are.

Mr. Van Dusen: Well, will you also state that there is a certification on there?

Mr. Martin: On page 5—and the pages are not numbered [413] —there is what purports to be

(Testimony of J. Gordon Rosen.)

the signature of a deputy collector with a collector's seal and the stamp, marked "United States Customs Service, Port of Port Arthur, Texas."

Mr. Van Dusen: Mr. Examiner, may I put it this way: I am offering a copy of shipping articles for the SS "Nevada" bearing date of register January 9, 1938, covering a trip for the SS "Nevada" from the Port of Port Arthur, Texas, to one or more ports in the continent of Europe in which the name of Gordon Rosen is listed and which bears a certificate of the deputy collector with the seal of such collector to the effect that this copy is a true copy of the filed copy of original on file in the office of that collector of the Port of Port Arthur, Texas. I am asking Mr. Martin to accept this as the shipping articles covering the trip on the SS "Nevada" which Mr. Rosen took on or about January 9, 1938, in lieu of the original.

(Discussion off the record.)

Mr. Van Dusen: I will have to withdraw that request.

Mr. Examiner, I am finished with Mr. Rosen except that there are two shipping articles referred to by Mr. Rosen, of which I shall inquire of him regarding certain things. I don't think I need to recall him to identify his signatures. I can do that through Mr. Martin. The other point is perhaps in connection with the telegrams which Mr. Wright is producing. Now if Mr. Rosen will be available

(Testimony of J. Gordon Rosen.)
during the course of the [414] hearing I can call him just for those specific purposes.

Trial Examiner Myers: Mr. Martin, will you produce Mr. Rosen at some later date if he is wanted by Mr. Van Dusen?

Mr. Martin: Yes, sir. We are willing to do that.

Mr. Van Dusen: I am finished with Mr. Rosen.

Trial Examiner Myers: All right. Is there any redirect examination?

Mr. Martin: There will be a short series of questions, Mr. Examiner.

Trial Examiner Myers: All right.

Redirect Examination

Q. (By Mr. Martin) Mr. Rosen, I believe you testified on cross examination that the usual pay off place for voyages on Texas Company ships was Port Arthur, Texas, is that correct?

A. That is the usual paying off port.

Q. Do some men get off at other ports however?

A. Yes, sir, they do.

Q. In the middle of a trip?

A. In the middle of a trip.

Q. And to your knowledge some men have been discharged in the middle of a trip at other ports?

A. Yes, sir, to my knowledge they have.

Q. You testified on cross examination, I believe, that when [415] you shipped on the SS "Washington" through Dave of the Seamen's Church Insti-

(Testimony of J. Gordon Rosen.)

tute you didn't tell Dave that you were a member of the National Maritime Union?

A. No, sir, I didn't.

Q. Now prior to that time had you told Dave that you were a member of the National Maritime Union or conducted yourself in his presence in such a manner that he could know that you were a member of the National Maritime Union?

Mr. Williams: Mr. Examiner, that is an exceedingly indefinite way of acquiring knowledge and I must register objection to it.

Trial Examiner Myers: Will you read that question again, Mr. Reporter?

(The last question was read.)

A. The only time that I can recall——

Trial Examiner Myers: Wait a minute. Wait a minute.

Mr. Williams: I have no objection to the first part of the question.

Trial Examiner Myers: Will you reframe that question. It is a little awkward.

Mr. Martin: Yes, I will do that.

Q. (By Mr. Martin) Mr. Rosen, prior to that time had you told Dave you were a member of the National Maritime Union?

A. No, I never told him.

Q. Prior to this time had you acted in front of him or in [416] his presence in such a manner that he could not doubt that you were a member of the National Maritime Union?

(Testimony of J. Gordon Rosen.)

Mr. Williams: I have objection to that on the ground that it is entirely too indefinite. If he wishes to ask the witness what he did and what he said we have no objection to that.

Trial Examiner Myers: I sustain the objection.

Did you have any conversations with Dave regarding unionism?

A. No, I never did mention the subject of unionism to this man known as Dave.

Trial Examiner Myers: Did you tell him at any time that you had registered at the union headquarters?

A. I don't believe that I ever did.

Trial Examiner Myers: Have you any reason to believe that Dave knew that you were a member of the union?

A. Yes, sir, I do believe he knows that I am a member of the union, because when I left the SS "California" and I went on the SS "Gulfbelle" and the SS "Gulfgem" and I left the ship just before Christmas last year, Dave wanted to see my discharges before he would register me and he knows that the Gulf ships are N. M. U. ships; were at that time; and I showed him my discharges from the Gulf Company.

Mr. Van Dusen: Well, I move to strike it out as not responsive. The discharge slip would be the best evidence of [417] that, as to whether it shows that he is an N. M. U. man.

Trial Examiner Myers: Motion denied.

(Testimony of J. Gordon Rosen.)

Mr. Van Dusen: Exception.

Q. (By Mr. Martin) Mr. Rosen, does the union allow you to call any company and ask for a job shipping on their line?

A. The union does allow us to do that.

Q. It does? A. Yes, sir.

Q. Is it customary for union men to do that?

A. Not—I will take that back. Some lines are considered unfair by the union; that is, referred to as scab lines and so forth; and the union does not consider their men to go aboard their ships if they have picket lines surrounding the ships of any shape or description.

Q. Mr. Rosen, is the National Maritime Union in favor of one individual sailor going to the officers of a company, like The Texas Company or the Gulf Company or any of the others, and on his own behalf requesting a job on one of their ships?

Mr. Williams: I wish to object to that because it doesn't make any difference whether they did or did not. If they did it would be denial of the constitutional rights of an American citizen to approach anybody and ask for work.

Trial Examiner Myers: Will you read the question again?

(The last question was read.) [418]

Mr. Williams: I wish to level the further objection to it that the Examiner has already sustained objections with regards to instructions that might be given to these men by their branch union at

(Testimony of J. Gordon Rosen.)

Port Arthur or anywhere else. He has tried to bring out as to what instructions he had and the objection was leveled to it and sustained. This question of course is asking this man what the union instructs him to do in cases of that kind.

Trial Examiner Myers: I will sustain the objection.

Mr. Wright: Mr. Examiner, you will recall that evidence was produced on cross examination——

Trial Examiner Myers: The evidence was introduced on cross examination of what these people did; not what they were instructed to do. That is the dividing line.

Q. (By Mr. Martin) Mr. Rosen, to your knowledge do sailors who are ashore and unemployed take themselves to company offices and request jobs; I mean members of the N. M. U.?

A. One of the duties of a member of the N. M. U. is to try to obtain rotary shipping through the union hall. Therefore members that do go out individually and solicit jobs are not considered to be aggressive union men.

Mr. Williams: Your Honor, the answer was not responsive to the question. I move that it be stricken.

Trial Examiner Myers: I do not know whether you are making an objection or a statement. [419]

Mr. Williams: I will withdraw it.

Q. (By Mr. Martin) And is that the reason, Mr. Rosen, that you did not try to get a job while

(Testimony of J. Gordon Rosen.)

you have been ashore since July, 1938, by that means?

A. That is one of the reasons, yes, sir.

Q. Mr. Rosen, does the same hold true with respect to trying to get a job on the docks; walking along the docks?

A. Yes, we don't encourage shipping off the docks.

Q. And boarding houses?

A. And boarding houses.

Q. And is that the reason why you didn't use those avenues of trying to get a job?

A. That is one of the reasons, yes.

Q. Now, Mr. Rosen, you testified, I believe, on both direct and cross examinations that after you had talked with the captain of the "Nevada" at Bilboa with respect to obtaining shore leave you were in fact granted shore leave. Do you attribute the fact that you were granted shore leave following that request solely to the fact that you made the request or also to the fact that between the time that you made the request and the time that word came that you had been given the leave that the port authorities at Bilboa sent word to the captain that it would be satisfactory for the crew to go ashore?

A. That is a long question. I would like to have that [420] question read.

Mr. Martin: Will you read the question, Mr. Reporter?

(The last question was read.)

(Testimony of J. Gordon Rosen.)

Mr. Williams: Now we will level objection to that because it calls purely for a conclusion of the witness. I remember the testimony exactly——

Trial Examiner Myers: I didn't hear you, Mr. Williams.

Mr. Martin: Mr. Examiner, I withdraw the question.

Trial Examiner Myers: All right. The question is withdrawn.

Q. (By Mr. Martin) Mr. Rosen, I believe you testified that word came back to the fore-castle that you could go ashore at Bilboa? A. Yes, sir.

Q. Who brought that word?

A. Whoever was on watch notified some of the other sailors and they notified everybody else; one of the quartermasters.

Q. Do you remember specifically how you learned that you could go on shore leave?

A. Some of the other sailors told me that we were allowed shore leave and to go up and get a draw.

Q. Did you talk with the captain further about this matter in Bilboa? A. Not in Bilboa.

Q. When you were talking with him in Pasjes on the same [421] subject did you ask him how come you had had shore leave at Bilboa?

A. I don't remember the exact discussion. The substance of it was that the captain said that one of the men had been drunk in Bilboa and that was the reason we were not allowed shore leave here.

(Testimony of J. Gordon Rosen.)

I said, "I don't remember anybody being drunk. Didn't hear of anybody being drunk in Bilboa."

Q. Do you believe that the crew would have been granted shore leave at Bilboa had you not made the request?

Mr. Pipkin: I object to the question because it calls for a conclusion.

Mr. Williams: The testimony on this subject was this: The crew wanted shore leave at Bilboa; the master said, "I can't give it to you because the military authorities——

Trial Examiner Myers: Not at Bilboa.

Mr. Williams: At Bilboa.

Mr. Martin: At Pasjes.

Trial Examiner Myers: I don't think that is the testimony.

Mr. Williams: I think that situation also obtained at Bilboa.

Trial Examiner Myers: Well, what happened now? Just to clear up that point what happened when you pulled in at Bilboa? Now tell us all what happened.

A. We were notified that we wouldn't have any shore leave. [422]

Trial Examiner Myers: Who notified you? One of the mates?

A. No. One of the members of the crew. Then we had a short meeting. I was elected with another sailor, W. W. Salas, to go up and talk to the captain, Captain Swanson. On the way up we met the

(Testimony of J. Gordon Rosen.)

second mate, Mr. Hopper. He wanted to know where we were going. We told him we were going up to the captain.

He said, "Well, you ought to have a committee elected from back aft to see about this shore leave."

I said, "That is what we are doing."

We went up and saw the captain and some Spanish official was in the room. I asked the captain about shore leave in Bilbao. He said, "I cannot give you shore leave until the military authorities grant it."

Trial Examiner Myers: Then what happened?

A. I then asked him if one of us would be allowed to go ashore to find out about this permission.

He said, "No."

Then we went back aft.

Trial Examiner Myers: Then what happened?

A. He sent word back aft while I was washing up. One of the sailors came in and told us we were allowed shore leave; to go up and get our money and we could go ashore.

Trial Examiner Myers: Do you know whether the captain [423] granted your request because you made it on behalf of the crew or because he himself got permission from the military authorities?

A. That I don't know positively.

Q. (By Mr. Martin) To clear the record, Mr. Rosen, will you tell us whether you repeatedly have tried to get jobs on Texas Company ships merely

(Testimony of J. Gordon Rosen.)

to be able to unionize or merely to be able to have employment or both?

Mr. Pipkin: I would like to interpose the objection that he is trying to impeach his own witness. He brought this out on direct testimony. He answered that question again on cross examination and now he is trying to get him to change his testimony.

Trial Examiner Myers: I will overrule the objection.

Mr. Pipkin: I make that in the form of an objection.

Trial Examiner Myers: I overrule it. Will you answer the question?

A. I would like to have that question read.

Trial Examiner Myers: Read the question.

(The last question was read.)

A. Both.

Q. (By Mr. Martin) Now, Mr. Rosen, to clear the record also, do you bear any personal unfriendly feeling toward any officers or any officials of The Texas Company, Marine Division or do you merely feel that in certain respects the company [424] has discriminated against and been unfriendly towards the union of which you are a member.

Mr. Van Dusen: Mr. Examiner, in the first place I object because he is leading his witness. In the second place, I object because he is asking for a conclusion. He uses words like "discriminate" and so on.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: I will sustain the objection. If you just divide your questions into three or four parts I believe he will be able to answer them, Mr. Martin.

Q. (By Mr. Rosen) Mr. Rosen, do you have any personal basis for any personal ill will toward the company? A. Not personal, no.

Q. Do you feel that you have any basis for an unfriendly feeling against the company?

A. Not against the company.

Q. Or any of its officers because of what you believe to be any unfair labor practice or practices against the union of which you are a member?

A. It would be pretty hard to remain neutral on a question like that.

Mr. Pipkin: I move that the answer be stricken as not being responsive.

Trial Examiner Myers: Well, he just said in so many words that he couldn't answer the question.

Mr. Pipkin: I withdraw the objection. [425]

Q. (By Mr. Martin) Is any feeling you have in the matter based upon what you believe to be the company's attitude towards and actions with respect to the National Maritime Union?

A. Yes, and it is more a feeling in respect with all union members.

Q. Do I understand that your feeling is based—

A. (Interrupting) In respect to all union members.

Q. And is it based on the company's actions in

(Testimony of J. Gordon Rosen.)

labor matters dealing with the union?

A. I don't think I got that whole question.

Mr. Martin: Will you read the question, Mr. Reporter?

(The last question was read.)

A. I think it is based on the actions of certain officials of the company in regard to——

Q. (Interrupting) In respect to labor matters?

A. With regard to labor matters.

Q. And the union? A. And the union.

Q. And with respect to labor matters that the union has brought up? A. Yes, sir.

Q. And that you have brought up?

A. In behalf of the union members, yes, sir.

Q. Mr. Rosen, you have testified on direct and cross [426] examination that the date upon which you left the SS "California" was September 19, 1937, is that correct?

A. On or about that date, yes, sir.

Q. Can you tell us at approximately what time the boat arrived at Port Arthur that day?

A. In the morning. Some time in the morning.

Q. Can you tell us approximately what time you were paid off from that ship?

A. After dinner. Some time after 1:00 o'clock.

Q. What time after 1:00 o'clock?

A. I don't remember the exact time.

Trial Examiner Myers: Some time in the afternoon?

A. Some time in the afternoon, yes, sir.

(Testimony of J. Gordon Rosen.)

Q. (By Mr. Martin) Some time after 1:00 o'clock?

A. Between 1:00 and 3:00. Some time between 1:00 and 3:00.

Q. Some time between 1:00 and 3:00 o'clock?

A. Yes.

Trial Examiner Myers: In the afternoon?

A. In the afternoon.

Q. (By Mr. Martin) And roughly, about what time did it dock?

A. The best of my recollection is that it docked in mid-morning.

Q. And you would say that is about what time?

A. Between 9:00 and 10:00. [427]

Q. Now about what time was it that the boatswain, Leslie Thompson, said to you the words that you have testified to on direct examination, which I believe to have been something like this, "Your money is waiting for you. You are discharged"?

A. He used the word "fired."

Q. What time was that?

A. Within a short time after the boat had docked.

Q. Before 11:00 o'clock?

A. Yes, it was before 11:00 o'clock.

Q. Before 12:00 o'clock?

A. Yes, before 12:00 o'clock.

Q. At least before 1:00 o'clock?

A. Before 1:00 o'clock.

(Testimony of J. Gordon Rosen.)

Q. Now did you testify that after this conversation with the boatswain you had a discussion with the mate on this subject?

A. No, sir, I didn't have a discussion with the mate until after dinner; after 1:00 o'clock.

Q. Until after dinner? A. Yes.

Q. At about what time did you have a discussion with the mate?

A. Roughly, between 1:00 and 3:00.

Q. Was it nearer 1:00 or nearer 3:00? [428]

A. I would say about closer to 2:00 o'clock.

Q. Will you tell us what happened and what was done at that time and what was said between you and the mate?

A. The mate had—he had notified me to come up and get my money and papers. I came up in his room. That was the second mate, Mr. Baldwin. He had some papers on his desk. He was writing on them. He says, "Here is your money."

I said, "Well, what is the reason why I am being fired?"

He said, "Reason? Well, you know we don't want no union agitating back there."

Q. Is that all?

A. I took my money and papers and left.

Q. Now do you remember whether the conversation took place before or after you received your money and your papers?

A. Before I received the money and the papers, yes.

(Testimony of J. Gordon Rosen.)

Q. I believe you testified on both direct and cross examination that the mate Baldwin was doing some writing at the time?

A. He was, yes, when I came in.

Q. And that while he was writing he was talking to you? A. Yes, sir.

Q. And then he paid you off? A. He did.

Q. Now is that the first discussion you had had with mate Baldwin about your being fired? [429]

A. That is the first discussion I had with the mate Baldwin about being fired, yes, sir.

Q. Had you had a discussion with any other mate or the captain prior to this time about being fired? A. No, sir, I didn't.

Q. But you had had a discussion several hours before with the boatswain, who Captain Roney described as a foreman? A. Yes, sir.

Q. Now in this conversation which you had with the boatswain Thompson, did he say as of what time you were fired?

A. He didn't mention as of what time. He just said, "You are fired."

Q. From that did you understand that you were fired as of that moment?

A. No, I understood I was to finish up until noon.

Q. Until noon? A. Yes.

Q. And did your shift end at noon?

A. Yes, mine did. [430]

Q. Did Mr. Thompson say anything about "You

(Testimony of J. Gordon Rosen.)

are discharged when you finish this shift at noon”?

A. I don't remember his exact words, but he did tell me to work up till noon.

Q. Did he say anything to the effect that “You are discharged as of the end of this trip”?

A. No, sir, he didn't say anything like that.

Q. You are very sure he didn't say anything like that? A. Yes, sir, I am.

Q. Now, in your conversation with the mate did the mate say as of what time you were fired?

A. You mean the second mate, Mr. Baldwin?

Q. Yes. A. No, he didn't specify.

Q. I understood you didn't talk to any other mate on the subject? A. No, I didn't.

Q. Or to the captain? A. No.

Q. He didn't specify? A. He didn't.

Q. He didn't say you were fired as of the end of this trip? A. No, sir.

Q. He didn't say you were fired as of noon when you finished your last shift? [431] A. No, sir.

Q. He didn't say you were fired as of the time Boatswain Thompson spoke to you and told you you were discharged? A. No, sir.

Q. Mr. Rosen, at the time you were paid off were there other members of the crew waiting to be paid off?

A. I didn't see any at the time I was paid off.

Q. Do you know whether other members of the crew had previously been paid off? A. Yes, sir.

Q. Some of them had?

(Testimony of J. Gordon Rosen.)

A. Yes, sir, James Blasingame and I am not so certain about Arthur Spencer. He had notified me he had been fired.

Q. Had all the crew been paid off when you were paid off?

I withdraw that question.

To your knowledge were all of the members of the crew drawing money that day?

A. Yes, sir, they were all drawing money.

Q. They were all drawing money? A. Yes.

Q. Now, had all of them finished drawing money when you drew yours or were there others waiting?

A. I am not certain about that point whether they were or not.

Q. Mr. Rosen, you have stayed in Port Arthur most, if not all [432] of the time since July 14, 1938? A. I have.

Q. Have you left it at all?

A. On one occasion I left and went to Beaumont.

Q. For how long a period? A. For six hours.

Q. Then you have been here the rest of the time? A. I have.

Q. During that period have you associated with a number of seamen ashore? A. Yes, sir.

Q. In your discussions with these men and other people in Port Arthur during that period have you generally understood that shipping was slow or fast? A. Very slow.

Q. Very slow? A. Yes, sir.

(Testimony of J. Gordon Rosen.)

Q. You mean it has been rather difficult to get a job during that period? A. That is right.

Q. So far as you knew?

A. So far as I knew, yes.

Q. Mr. Rosen, to clear the record did you have an illness at the time you lost your hair?

A. Well, it is quite a long story. [433]

Q. Well, I am sorry, but we have to go into it. Do it just as briefly as you can. First, Mr. Rosen, answer my question. Did you have an illness?

A. What type of illness?

Q. Were you in the hospital? A. I was.

Q. Were you in a number of hospitals?

A. I was.

Q. How long were you under doctor's care?

A. Two months in one hospital and a month in another hospital and a month in another hospital.

Q. It cost you a good deal of money?

A. Not in the Marine Hospitals, but I went to a private hospital.

Q. I believe you testified, Mr. Rosen, that a number of meetings of the crew were held during working hours. Can you tell me on what ships any such special meetings were held? Well, to clarify the record, Mr. Rosen, were any meetings held which were attended by men who were supposed to be working during that shift?

A. They attended brief special meetings.

Q. On what ships?

(Testimony of J. Gordon Rosen.)

A. The SS "Nevada" principally in an emergency.

Q. Any other ships?

A. The SS "California" only in one instance that I know of [434] and the SS "Washington", I will have to look at my notes to make sure. On the SS "Washington" I don't recollect any special meetings during working hours.

Q. Now, you say you remember one on the "California"? A. Yes.

Q. Do you remember how long that lasted?

A. About an hour. Approximately an hour before the whole thing was through, the whole discussion had finished.

Q. And on the "Nevada" how long did those meetings last? A. Not over five or ten minutes.

Q. Not over five or ten minutes? A. No, sir.

Trial Examiner Myers: Did any men attend those meetings who were supposed to be working?

A. Yes, sir, it was a general practice in a special meeting for those men to attend.

Q. You say those were emergency meetings?

A. They were.

Q. By whom were those meetings called?

A. Any member that had a grievance that he wished to have settled immediately.

Q. Who would call the meeting?

A. He would ask the delegates to call the meeting.

Q. The delegates would call the meeting?

(Testimony of J. Gordon Rosen.)

A. Yes, sir. [435]

Q. And if in the opinion of the delegate the matter was sufficiently an emergency then the delegate or delegates would call the meeting?

A. They would, yes, sir.

Mr. Williams: I must object to these leading questions. It has gone quite a long ways now I think. The questions are leading the witness with a string.

Trial Examiner Myers: Don't lead so much, Mr. Martin?

Do I understand that these meetings were called as, for instance, when the quartermaster was asked to do a certain job and he thought that job was not one for him to do? A. Yes, sir.

Trial Examiner Myers: Then he would report that to the delegate before he would go ahead with the work so that he wouldn't get in trouble with the mate if he was wrong?

A. Yes, sir, and when an emergency arose, if any member of the crew felt that he had a grievance that he wished to have settled immediately he asked the delegates to call a special meeting or try to settle the grievance——

Trial Examiner Myers: Well, he took the matter up with the delegate and then whatever the delegates decided to do was up to the delegate? Is that what you mean? A. Yes.

Q. (By Mr. Martin) Now, Mr. Rosen, on September 19, 1937, between the time that the "Cal-

(Testimony of J. Gordon Rosen.)

formia'' docked at Port Arthur [436] between 9:00 and 10:00 and when you were paid off by the mate, did you overhear any conversations between any officials of the ship and Blasingame or Spencer?

A. Not any I recall, no, sir.

Q. During that period or interval did you see the boatswain, any of the mates, or the captain standing talking with either Blasingame or Spencer?

A. I don't recall that either. [437]

Mr. Williams: Your Honor, we object to such a question as that. If he knows that something was said or done——

Trial Examiner Myers: Well you are complaining that he is leading him and he has to go around the other way now.

Mr. Martin: Your witness, Mr. Van Dusen.

Recross Examination

Q. (By Mr. Van Dusen) Mr. Rosen, this Gulf discharge certificate which you showed to Dave over at the Seamen's Church Institute, there was nothing on that certificate to indicate that you were an N. M. U. member, was there?

A. Nothing except the fact that it was a Gulf certificate.

Q. I mean it was a Gulf ship? A. Yes.

Q. There was nothing on there to indicate that you were an N. M. U. member other than that?

A. It was understood that these Gulf ships were N. M. U. ships.

(Testimony of J. Gordon Rosen.)

Q. Please answer my question. There is nothing on the certificate to indicate that you were a member of the N. M. U.?

A. No, sir, there wasn't.

Q. Now you said that the Gulf Company had to get its seamen through N. M. U. Hall, didn't you?

A. At what time? Previous to the—— [438]

Q. No, no, since they have been under contract. During this period that Mr. Martin talked about did the Gulf Company have to get its men through the N. M. U. Hall?

A. I don't think that they were specifically tied down to getting their men through the N. M. U. Hall, all of them, but it was the common practice.

Trial Examiner Myers: But they had to have N. M. U. men?

A. I believe the contract called for N. M. U. men, yes, sir.

Q. (By Mr. Van Dusen) Well now, you say that they had to get N. M. U. men for their ships?

A. Yes, the men did have to belong to the N. M. U. They were given preference if they belonged to the N. M. U.

Q. Then there might be some men who weren't N. M. U. men?

A. No, sir, they wouldn't be rehired if they weren't N. M. U. men.

Q. Were you here the other day when Mr. Ames testified? Have you been here since Monday?

A. Yes, sir.

(Testimony of J. Gordon Rosen.)

Q. Didn't you hear Mr. Ames say that the Standard Tanker Agreement didn't require these companies to get their N. M. U. men from the N. M. U. Hall? Didn't you hear him testify to that?

A. I didn't hear Mr. Ames testify as such. [439]

Q. Did you hear him testify to that effect?

A. He testified something about the Tanker Agreement, yes, sir. There was quite a bit of discussion about that.

Q. You didn't hear what he said on that?

A. Not all of it.

Q. If he so testified, would you say he is incorrect?

Mr. Wright: Now wait a minute.

Trial Examiner Myers: Wait a minute, Mr. Van Dusen. I believe both you and the witness are in accord on that point. He says that the agreement does not make it obligatory on the Gulf people to call up the Union Hall for men if they need them.

Mr. Van Dusen: I thought he answered your question by saying——

Trial Examiner Myers: No. What I said was this: Is it necessary or obligatory on the part of the Gulf people to hire only N. M. U. men.

Mr. Van Dusen: And what was his answer?

Trial Examiner Myers: What was your answer to that question?

A. The question was whether the——

Mr. Van Dusen: (Interrupting) Whether the Gulf Company had to hire N. M. U. men.

(Testimony of J. Gordon Rosen.)

A. The N. M. U. men were given preference in employment.

Q. (By Mr. Van Dusen) But they didn't have to hire all [440] N. M. U. men?

Mr. Wright: Mr. Examiner, I suggest that calls for a legal conclusion of this witness.

Trial Examiner Myers: No, no, it does not. I would like to find out that point myself, because he testified before that the reason why this fellow Dave at the Seamen's Church Institute knew that he was a Union man is because he was discharged from one of the Gulf Company boats. Now, he says the Gulf people do not have to have an entire Union crew. Now if that is so, Dave does not necessarily have to know that he is a Union man.

What are the facts? That is what we want, Mr. Rosen.

A. The facts are that if a non-union man attempted to ship aboard any N. M. U. ship the company is perfectly aware of the fact that it would cause a great deal of feeling and rather than do that they ship N. M. U. men.

Trial Examiner Myers: Do you mean it is the policy of the company to hire N. M. U. men?

A. Yes, sir.

Trial Examiner Myers: But they don't have to do that under the contract?

A. Yes, sir, that is it.

Q. (By Mr. Van Dusen) You don't know of

(Testimony of J. Gordon Rosen.)

your own personal knowledge that Dave knows that?

Mr. Wright: I want to urge objection to that. I don't [441] mind anybody going into that, but I think the construction of that contract is a matter of law as to what the preference is, and irrespective of what this witness says it should not be binding on the Union or the Board or anybody else.

Mr. Van Dusen: We are talking about Dave's knowledge. You brought it out on redirect examination.

Trial Examiner Myers: Objection overruled.

Mr. Van Dusen: Read the question.

(The last question was read.)

Mr. Van Dusen: I will withdraw the question.

Q. (By Mr. Van Dusen) Did you ever tell Dave that the Gulf Company hired only N. M. U. men?

A. No, I didn't.

Q. Now you said on redirect examination that the reason why you didn't try to get a job from other companies that didn't have agreements with the N. M. U. was because unemployed N. M. U. sailors did not as a matter of practice go to those other companies, is that correct?

A. I said that was one of the reasons.

Q. All right. That is one of the reasons.

A. One of the reasons.

Q. That is one of the reasons you took that action, is that so?

A. That is one of the reasons, yes. [442]

(Testimony of J. Gordon Rosen.)

Q. Yet you did put yourself on The Texas Company list and The Texas Company is one of the companies not having an agreement with N. M. U., isn't that correct? A. Certainly.

Q. So in that respect you violated the policy of the N. M. U., did you not? A. No, I didn't.

Trial Examiner Myers: I think you misunderstood the question. As I understand it, Mr. Van Dusen, he didn't solicit a position from these other companies because it was more or less unethical.

[443]

Mr. Van Dusen: All right. I will ask him this:

Q. (By Mr. Van Dusen) You did solicit a job from The Texas Company, didn't you?

A. No, I didn't.

Q. Didn't you testify on direct examination that you called The Texas Company's office and tried to get a job?

A. Yes. No. I take that back. I talked to Captain Hand and asked him what he was going to do about my case.

Q. That is The Texas Company, isn't it?

A. Yes.

Q. Well, you did ask him about a job?

A. He told me he would look into my case and I asked him what he was going to do about it.

Q. You wanted a job, didn't you?

A. Yes, I wanted a job.

Q. And you did solicit The Texas Company for a job, didn't you? I say you did then solicit The

(Testimony of J. Gordon Rosen.)

Texas Company for a job?

A. Well, technically speaking——

Q. No. I mean as a matter of fact.

Mr. Martin: Let the witness answer. Go ahead Mr. Rosen.

Mr. Wright: Mr. Examiner, may I have the objection that it is argumentative and calling for a conclusion of the witness with respect to that question?

Mr. Van Dusen: All right, I will withdraw the question.

Q. (By Mr. Van Dusen) I will ask you whether it is a fact [444] on direct examination that these questions and answers were not asked and given by you——

Mr. Wright: Mr. Examiner, I object to this for the reason that it is already in the record and the record speaks for itself. If the record says he said it, he said it.

Trial Examiner Myers: Overruled.

Q. (By Mr. Van Dusen) “Question: Have you made any other attempt since July 14, 1938——

Trial Examiner Myers: Wait now, Mr. Van Dusen. You are accusing the witness of the fact that when he went to Captain Hand he applied for a job. He applied for reinstatement. Now, he didn't go there to The Texas Company fresh off the street as if he had never been employed there. He had just been discharged or fired from there and he went up

(Testimony of J. Gordon Rosen.)

to the captain and he said, "What about getting re-employment?"

Now, Mr. Martin might have and the witness might have used other words, but that is the effect of it.

Mr. Van Dusen: Well, I would rather rely on what he said.

Trial Examiner Myers: That has nothing to do with it. I think you ought to skip that.

Mr. Van Dusen: Well, on redirect they are trying to justify his not going to other companies for jobs and the reason offered is that the policy of the Union is not to permit N. M. U. members to go to companies that have not signed [445] agreements with the union.

Trial Examiner Myers: I understand, and I might be wrong, that when he was asked these questions you are about to read to him now, they were asked to find out whether he ever applied for re-employment. There was a whole series of questions and answers about what he did in order to get his job back. I believe if you will read the whole of the testimony at that spot you will find out that I am correct about it.

Mr. Van Dusen: I don't find anything here on that. There is a discussion as to how he got on the list of the Seamen's Church Institute and then he said he called Mr. Myers and there was no answer and then he said he called Mr. Hand and that was the conversation I started to read.

(Testimony of J. Gordon Rosen.)

Trial Examiner Myers: Well, if you insist on going ahead with it, you may go ahead.

Mr. Van Dusen: I think it is very important, Mr. Examiner.

Trial Examiner Myers: I don't want to cut off your examination. I am quite sure when he applied for a job at the Texas Company he applied for re-employment, but go ahead with it.

Q. (By Mr. Van Dusen) "Question: Have you made any other attempts since July 14, 1938, to get a job with The Texas Company, Marine Division?"

"Answer: Yes, sir. [446]"

"Question: What attempts?"

"Answer: I called up Captain Hand.

"Question: About when?"

"Answer: About July 16th.

"Question: Did you speak with Captain Hand personally?"

"Answer: Yes, sir, I did.

"Question: What was said in that conversation?"

"Answer: I said, 'Captain Hand, I was fired off the "Washington" and you said you would look into it.'

"He said, 'Yes'.

"I said, 'You know they have made no attempt to do anything about it.'

"He said, 'I don't know anything about it.'

(Testimony of J. Gordon Rosen.)

“I said, ‘You know I was discriminated against.’

“He said, ‘I never said anything like that.’

“I said, ‘I filed the complaint with the Labor Board.’

“He said, ‘That is in the hands of the New York office. They are over my head.’

“I said, ‘How about getting a job again?’

“He said, ‘I will look into it again,’ and hung up.”

Did those questions and answers take place on direct examination?

A. Practically as read.

Q. Now, you testified on redirect examination, Mr. Rosen, that you had feeling against The Texas Company because of [447] their attitude toward the N.M.U. in labor matters. When did you first have that feeling? When did that develop, that feeling toward The Texas Company?

A. This feeling was not toward The Texas Company.

Q. Well, then, toward the officials.

A. Well, it was impossible to stay neutral——

Q. (Interrupting) I mean when. When did you first reach that stage? When did you first get into that state of mind that you had ill feeling toward the officials of The Texas Company?

A. I don't have any ill feeling toward them.

Q. I thought that is what you said in answer to Mr. Martin's question?

(Testimony of J. Gordon Rosen.)

A. I said it was impossible to stay neutral on the question of my feelings toward them.

Q. Well, you don't have any too good feeling toward the officials?

A. No, I don't feel good toward them.

Q. No. Well, when did that first begin?

A. Well, I didn't set any definite date on it.

Q. Well, about when? Would you say after you left the "Washington" or after you left the "Nevada"?

A. Well, my feelings had changed a little, yes, after I left the "Nevada" toward The Texas Company.

Q. How about after you left the "California"? Did you [448] feel badly toward them after you left the "California"?

A. Not so bad. I expected that.

Q. You felt a little worse after the "Nevada" incident? A. Yes, sir.

Q. And after the "Washington" incident it was still worse? A. No it wasn't.

Q. What? A. I expected that.

Q. Then it was about the same as after the "Nevada"? After the "Washington" it was about the same as it was after you left the "Nevada"?

A. What do you mean?

Q. Your feeling toward the officials of The Texas Company.

A. You said I felt as bad as I could. I didn't

(Testimony of J. Gordon Rosen.)

feel especially bad toward the officials. I could see a change in their attitude, that is all.

Q. You didn't like it?

A. No, I didn't like it.

Q. You didn't like it to such an extent that you thought you ought to get evidence to build up a case against them, didn't you, isn't that so?

Mr. Wright: Mr. Examiner, I object to that. I object to it for many reasons, the most important of which is that I think it is highly improper. I am willing to stipulate with this gentleman that this man did go on the ship and [449] make notes, that he did keep the record on that when he came out, he came out expressly for the purpose of filing the charge.

Mr. Van Dusen: May I refer to some of Mr. Rosen's testimony to the effect that on several occasions he felt he ought to have witnesses, that he felt he ought to take notes in order to establish his position.

Mr. Wright: That is right.

Mr. Van Dusen: That is all I am asking him.

Trial Examiner Myers: I will overrule the objection.

Mr. Martin: Mr. Reporter, will you read the question please?

(The last question was read.)

A. My first feelings with this evidence, whatever you call it——

(Testimony of J. Gordon Rosen.)

Q. (By Mr. Van Dusen) Please answer the question "yes" or "no", Mr. Rosen, to save time.

Trial Examiner Myers: Read the question please.

(The question was read.)

A. I felt that my rights had been violated under the Wagner Act.

Mr. Van Dusen: Will you please answer that "yes" or "no"?

Mr. Wright: Mr. Examiner, I object.

Trial Examiner Myers: I don't think it calls for a "yes" [450] or "no" answer.

Mr. Van Dusen: All right. Please answer it then.

Trial Examiner Myers: He did answer it.

Mr. Van Dusen: I didn't hear the answer. Will you read the answer, Mr. Reporter?

Mr. Martin: On behalf of the Board, I would like to object to the question.

Mr. Van Dusen: I want to hear the answer.

Mr. Martin: I would like to object to the question before the answer is read.

Trial Examiner Myers: The question was objected to and the objection overruled and the question answered.

Mr. Martin: The attorney for the Union objected, Mr. Examiner. Now, the attorney for the Board wishes to object to the question.

Trial Examiner Myers: I am sorry that you didn't get your objection in in time. I didn't know you wanted to object to it. It is all in now.

(Testimony of J. Gordon Rosen.)

Mr. Van Dusen: May I have the answer.

(The last two answers were read.)

Q. (By Mr. Van Dusen) So that you decided when you talked, in the future, to the officers of the ship or with Mr. Hand you would take notes immediately after the conversation, is that right?

A. As soon as possible, yes, sir. [451]

Q. And that wherever possible you would take witnesses with you, is that right?

A. Yes, sir.

Trial Examiner Myers: Well, there is nothing wrong in that. Now, let's go on, will you please?

Mr. Van Dusen: He says he has ill feeling toward the company.

Trial Examiner Myers: Well, there is nothing wrong with him bringing a witness along. He doesn't need a lawyer to advise him to do that. Let's go on now.

Mr. Van Dusen: I know, but I just want to show what his feeling was.

Mr. Martin: Mr. Examiner, I should like——

Trial Examiner Myers: We have taken care of it. What would you like, Mr. Martin?

Mr. Martin: Well, on behalf of the Board, I would like to indicate that the fact that a man tried to prepare a good case under the Wagner Act does not necessarily indicate any ill feeling toward the company.

Trial Examiner Myers: Well, I think that we all feel the same way about it.

(Testimony of J. Gordon Rosen.)

Mr. Martin: It is simply a case of a man trying to exercise his rights.

Mr. Van Dusen: But your examination tries to bring out that he had no ill feeling. Now I am trying to show the opposite. [452]

Mr. Martin: I am suggesting, Mr. Van Dusen—
Trial Examiner Myers: Now, wait. We have had enough of that on the record.

Mr. Van Dusen: Just one more question, Mr. Examiner.

Q. (By Mr. Van Dusen) Mr. Rosen, you said that since you left the SS "Washington" it was difficult to get a job because a number of men were on the beach, is that right? A. That is right.

Q. Well, then, why didn't you solicit these other companies that had no agreements with the Union.

A. Well, I thought—one of the reasons was it is the duty of the members to try to get a rotary shipping list and I had been registered with The Texas Company and could see no reason for not going back there again.

Q. Well, if there is unemployment and it is hard to get a job, isn't that a reason for trying to get it in as many places as possible?

Trial Examiner Myers: Well, he explained that it was unethical for a union man to go down and try to get a job out of the union headquarters.

Mr. Van Dusen: I don't think he means to

(Testimony of J. Gordon Rosen.)

imply that the men should starve if there is a job available. All right. That is all I have.

Mr. Martin: That is all.

Trial Examiner Myers: You are excused. [453]

(Witness excused.)

Trial Examiner Myers: We will take a few minutes' recess.

(A short recess was taken.) [454]

Trial Examiner Myers: Are you ready?

Mr. Martin: Mr. Examiner, we are finished with Mr. Rosen, except that, with Mr. Van Dusen's permission, we might want to call him back for a few minutes at some later time during the hearing.

Trial Examiner Myers: Is that agreeable to you?

Mr. Van Dusen: Yes, sir.

Trial Examiner Myers: You are excused for the time being, Mr. Rosen, but hold yourself in readiness in case we need you. Next witness.

